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IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1975
NO. 75-444

WILLIAM T. FARR,

Petitioner,

vs.

PETER J. PITCHESS,
SHERIFF OF LOS ANGELES COUNTY,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MARK HURWITZ
Attorney at Law
100 West Chapman
Orange, California 92666
Telephone: [714] 547-0997

Attorney for Petitioner

J. GALLAGHER, Printed Briefs (714) 547-6073

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IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1975

No. .....

WILLIAM T. FARR, Petitioner

vs.

PETER J. PITCHESS,
SHERIFF OF LOS ANGELES COUNTY, Respondent.

Petitioner, WILLIAM T. FARR, prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit.

OPINIONS BELOW

The opinion of the California Court of Appeal, Second Appellate District sustaining the contempt adjudication is officially reported and published in 22 Cal. App. 3d 60, December 17, 1971. The Memorandum of Decision and Order of the Federal District Court is attached hereto marked Exhibit "A" and is herein incorporated by reference. The Opinion of the United States Court of Appeals for the Ninth Circuit is attached hereto marked Exhibit "B" and is herein incorporated by reference.

JURISDICTION

The jurisdiction of this Court is invoked under and pursuant to 28 U.S. Code, Section 1254(1).

1. The Transcript references, contained herein are to the Reporter's Transcript in proceedings held in the case of **People vs. Manson,** et al., being Case No. A 253 156, in the Superior Court of the County of Los Angeles, State of California, presided over by the Honorable Charles H. Older. However, the proceedings applicable to the Petitioner herein were reported in four separate stages:

i) The first proceeding was conducted in chambers. Said transcript reference will hereinafter be referred to as **In-Chambers Tr.**

(ii) The hearings on the order to show cause proceeding that gave rise to the contempt adjudication (of which review is herein sought) were separately reported on June 3, June 30, and July 19, 1971.

2. "The Findings and Order Adjudging Contempts; Sentence Pursuant to C.C.P. 1218; Order of Commitment" dated August 6, 1974, is attached hereto marked Exhibit "C" and is incorporated herein by reference.

3. The opinion of the California District Court of Appeal, Second Judicial District, **In Re Farr,** 22 Cal. App. 3d 60 is attached hereto marked Exhibit "G" and is incorporated herein by reference.

4. The Memorandum of Decision and Order of the Federal District Court dated December 18, 1972 (Exhibit "A").

5. The memorandum decision issued by Justice William O. Douglas, January 11, 1973, ordering petitioner's Release on His Own Recognizance Pending

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Appeal in the United States Court of Appeals is attached hereto marked Exhibit "D" and is incorporated herein by reference.

6. The Opinion of the United States Court of Appeals for the Ninth Circuit dated August 7, 1975 (Exhibit B).

7. Stay of Mandate ordered by the United States Court of Appeals for the Ninth Circuit dated August 22, 1975, is attached hereto marked Exhibit "E" and is incorporated herein by reference.

QUESTIONS PRESENTED

I

The order adjudging petitioner's contempt is invalid by virtue of the First Amendment to the United States Constitution.

II

Petitioner's constitutional right to due process of law and to be free from the processes of an ex post facto law were violated by the retroactive application of an Appellate Court's determination in **Farr vs. Superior Court,** 22 Cal.App.3d 60, 99 Cal.Rptr. 342 (1970), that the California immunity statute was unconstitutional in the proceedings in which it was invoked by petitioner.

III

Petitioner was denied a hearing before an impartial court as demanded by the due process clause of the Fourteenth Amendment.

STATUTES INVOLVED

California Evidence Code, Section 1070 (see Exhibit "F" which is attached hereto and incorporated herein by reference).

STATEMENT OF FACTS

Petitioner is presently released from confinement on his own recognizance pursuant to an order of Justice William O. Douglas (Exhibit "D") and by virtue of an order for a stay of mandate issued by the United States Court of Appeals for the Ninth Circuit on August 22, 1975 (Exhibit "E").

On June 20, 1974, the Honorable William H. Levit, Judge of the Superior Court of Los Angeles County, after a hearing held pursuant to a decision of the California Court of Appeal in **In Re Farr,** 36 Cal.App.3d 577 (1974), issued an order terminating the coercive sentence imposed on July 28, 1971 by Judge Older. **On August 6, 1974, Judge Older issued a new Order of Commitment on his Findings and Order Adjudging Contempts issued and entered July 28, 1971.** Petitioner was thereby sentenced to five days in jail and a $500 fine. (A copy of this punitive order now confronting petitioner is attached hereto marked Exhibit "C".)

The July 28, 1971 contempt (the only contempt ever found against Mr. Farr) was adjudicated as a consequence of petitioner's refusal to answer thirteen various questions propounded during hearings held pursuant to an order to show cause issued by Judge Older on May 5,

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1971. The express purpose of this order to show cause proceeding was to enable the Court to determine if any persons subject to a "publicity order" imposed for the **Manson** murder trial had been contemptuous of that order. It has, at all times, been conceded that petitioner was not a party subject to this "Order Re Publicity."

Approximately seven months earlier on October 5, 1970, a written statement by one Virginia Graham relating confessions made to her by her cellmate, Susan Atkins, a **Manson** codefendant, was obtained by one of the Deputy District Attorneys assigned to the **Manson** case. Pursuant to the trial court's order, one copy of the statement was distributed, respectively, to each of the attorneys of record in that criminal trial.

Petitioner, who was then a reporter for the Los Angeles Herald Examiner and who had conducted an investigation for approximately six months for the purpose of acquiring facts concerning this confession, received two copies of the Graham statement on October 7, 1970, and another on October 8, 1970, after promising his sources of information that he would not reveal their identity.

On October 8, 1970, before the contents of such statements were published in the Herald Examiner, and after being apprised by Miss Graham's attorney that petitioner had been given a copy of the statement, Judge Older, then presiding over the **Manson** trial, conducted an in-chambers hearing to ascertain if, in fact, this was true and, if so, the identity of the persons who had given this material to Mr. Farr and what he intended to do with the

same. Mr. Farr acknowledged the receipt of the statement. Judge Older then requested that Mr. Farr voluntarily reveal his sources of information, but carefully advised petitioner that he had a right to refuse to respond to the Court's request by virtue of California Evidence Code, Section 1070, stating:

> "Another aspect, Mr. Farr, if I were to call you to the witness stand, for example, or someone would subpoena you to testify to these matters, you could, of course, assert or refuse to disclose your news under 1070, which provides that you cannot be adjudged in contempt by a court for refusing to disclose the source of any information procured for publishing and published in the newspapers.
>
> "It does not say you cannot be called.
>
> "The point I'm making is this, while I could not order you, that is, effectively order you to disclose the source, there is nothing to prevent you in the interest of justice and in aid of the administration of justice from voluntarily revealing it without waiving any right in the future to assert that immunity or privilege." (In-Chambers Tr., October 8, 1970, page 8, lines 7-28.)

Later, in that same in-chambers hearing Judge Older further commented:

> "And I assure you that there is no compulsion whatever to do it.
>
> "It is put on a purely voluntary basis. I won't think any the less of you or the Herald Examiner or anyone

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else if you say no. . . ." (In-Chambers Tr., October 8, 1970, page 11, lines 15-23.)

No further action was taken at that time. Petitioner continued to invoke the First Amendment and California Evidence Code, Section 1070 in support of his refusal to disclose. On October 9, 1970, the day following the aforementioned in-chambers hearing, a story based upon the Virginia Graham statement was published in the Herald Examiner.

On May 5, 1971, Judge Older executed the aforementioned order to show cause. No order to show cause proceeding has ever been initiated against any party subject to the publicity order imposed for the **Manson** trial.

Petitioner appeared with counsel at hearings on the order to show cause conducted on June 3, June 30, and July 19, 1971. He revealed that he had received copies of the Graham statement from two of the six attorneys of record in the **Manson** case and one from another source who may have been subject to the court's "Order Re Publicity." He refused, however, to identify his source, invoking, when ordered to do so, the First Amendment to the United States Constitution, and California Evidence Code, Section 1070.

Judge Older then reversed the position that he had earlier taken with respect to Evidence Code, Section 1070, and found that petitioner "wilfully refused" to answer the thirteen separate questions, all of which were designed to elicit a disclosure of the identity of those

from whom he received his information. It is this July 28, 1971 contempt adjudication for which petitioner hereby seeks review.

Judge Older then issued a stay of execution of the commitment Order pending appeal. This Trial Court Judge advised on November 27, 1972, that he issued this stay because he felt the appellate outcome on this question, "was not free of doubt." (November 27, 1972, transcript, page 17, line 3.)

Petitioner sought review with the California Court of Appeal. An alternative Writ issued and after oral argument a written opinion of the Court of Appeal affirmed the Judgment of Contempt. This opinion is reported in 22 Cal.App.3d 60.

On March 20, 1972, a Petition for Hearing by the California Supreme Court was denied. A Petition for a Writ of Certiorari to the Court of Appeal was sought before the United States Supreme Court.

The United States Supreme Court denied certiorari on November 13, 1972.

On November 16, 1972, the day after a remittitur was issued by the Supreme Court. Judge Older conducted another hearing for the purpose of allowing Mr. Farr to purge himself of the contempts. When he refused to do so he was ordered to jail pursuant to the July 28, 1971, Order of Commitment. A request for a stay pending the filing of a Petition for Writ of Habeas Corpus or for bail was denied by the Trial Court and on November 16, 1972, petitioner was incarcerated.

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That same day petitioner filed a Petition for Writ of Habeas Corpus with the California Court of Appeal. That Court ordered Farr released on his own recognizance pending its determination. On November 21, 1972, habeas corpus was denied.

On November 27, 1972, Judge Older conducted another hearing at which Farr continued to refuse to disclose his sources. Petitioner was again ordered remanded to custody.

IT MUST BE NOTED THAT MR. FARR WAS **NOT** FOUND IN CONTEMPT FOR HIS REFUSAL TO DISCLOSE THE IDENTITY OF HIS SOURCES OR FOR ANY OTHER REASON AS A RESULT OF EITHER OF THE NOVEMBER 1972 HEARINGS. THE ONLY CONTEMPT THAT HAS EVER BEEN ADJUDICATED WAS THAT FOUND BY THE COURT ON JULY 28, 1971, AS AFORESAID.

On November 21, 1972, a Petition for Writ of Habeas Corpus was filed with the California Supreme Court. The same was denied on November 29, 1972.

On November 30, 1972, a Petition for Writ of Habeas Corpus was filed in the United States District Court for the Central District of California, Robert J. Kelleher, Judge Presiding. Jurisdiction was invoked pursuant to 28 U.S.C., Section 2254. That Petition was denied on December 18, 1972.

The Federal District Court, however, on December 19, 1972, issued a Certificate of Probable Cause for appeal.

Dismissal of the petition for writ of habeas corpus by the Federal District Court was affirmed by the Court of Appeals on August 7, 1975. Application for rehearing was denied on September 12, 1975.

REASONS FOR GRANTING THE WRIT

I

THE ORDER ADJUDGING PETITIONER'S CONTEMPT IS INVALID BY VIRTUE OF THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION.

Both the Federal District and Ninth Circuit Court of Appeals properly recognized that a balancing of competing interests, consonant with **Branzburg vs. Hayes, In re Pappas,** and **United States vs. Caldwell,** 408 U.S. 665 (1972), is required when a newsman attempts to protect his sources of confidentially divulged information. They. however, seriously erred in determining that this Court's mandate in **Sheppard vs. Maxwell,** 384 U.S. 333 (1966) is here in issue or that under the precise facts of this particular proceeding a defendant's right to a fair trial is the value against which petitioner's First Amendment position should be balanced.

Mr. Farr's contempt was **NOT** found for soliciting a violation of the **Manson** court's publicity order or for collaborating with or in any way aiding or abetting those who may have disobeyed that order. He was. in fact,

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acquitted of all of those charges in a separate contempt proceeding instituted in the Los Angeles County Superior Court, the Honorable Bernard Jefferson, Judge Presiding.[1] It must, at the outset, also be noted that this newsman has never been charged in any legal proceeding with either writing or in any respect participating in the publication or dissemination of any story that had an inflammatory or prejudicial effect upon the **Manson** trial processes.

The contempt adjudication of which petitioner hereby seeks review was found only for this individual's refusal, in an order to show cause proceeding brought almost two months after the conclusion of the **Manson** trial, to testify as to the identity of those who provided information to him in possible violation of the court's publicity order.

An inquiry to determine ". . . where lies the paramount interest" in weighing the relative importance of petitioner's First Amendment claim (see Memorandum Decision of the Court of Appeals, page 4) must be limited to the conduct for which the contemnor was ordered incarcerated. When that is accomplished and all

1. In September 1971, Judge Older executed an affidavit in support of another order to show cause in re contempt issued against Mr. Farr. Judge Older therein charged that Farr acted in complicity with and promised to conceal the identity of those who violated the "publicity order." Mr. Farr's acquittal of all of those charges that have **Sheppard** implications was ordered in December 1971, by Judge Jefferson.

misconceptions are set aside, it can readily be seen that the true question before this Court is whether the importance of acquiring a news reporter's testimony in a yet-to-be instituted contempt proceeding against those who may have violated the court's publicity order is so "overriding" and "compelling" as to justify an antagonism of the First Amendment.

This Court, as Justice Powell noted in his concurring opinion in **Branzburg vs. Hayes, supra,** has repeatedly shown a "solicitude" for First Amendment freedoms. It has always required a painstakingly careful showing of a "serious and eminent," "overriding," "compelling," or "clear and present" danger before permitting an intrusion upon the freedom of the press. **Pennekemp vs. Florida,** 328 U.S. 331, 90 L.Ed. 1295 (1946); **Gibson vs. Florida Legislative Investment Committee,** 372 U.S. 539, 546, 83 S.Ct. 880 (1963); **NAACP vs. Button,** 371 U.S. 415, 83 S.Ct. 328; **DeGregory vs. Attorney General of New Hampshire,** 383 U.S. 826, 86 S.Ct. 1148 (1966); **Craig vs. Harney,** 331 U.S. 367, 67 S.Ct. 1239.

We suggest that particularly in light of the Court's reticence to "annex the news media as an investigative arm of government" (Justice Powell's concurring opinion in **Branzburg vs. Hayes, supra**), and its sensitivity to the notion that "without some protection for seeking out the news, freedom of the press could be eviscerated," (**Branzburg vs. Hayes, supra** at page 681) a review of this proceeding by our highest court is in order.

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A careful analysis of this record will reveal that not even the **Manson trial judge, at a time when he was closest to the proceeding, ever took the position that those matters that were the subject of this Court's** concern in **Sheppard vs. Maxwell,** namely: (1) the existence of unfair and prejudicial news comment, and (2) the intrusion into the deliberative processes of such outside prejudicial influences or any other aspect of a defendant's right to a fair trial, were placed in issue or jeopardized in the **Manson** case by virtue of petitioner's refusal to violate his commitment of confidentiality to news sources.

Judge Older was made aware by Mr. Farr that he had acquired the information in question from sources whose identity he was unwilling to disclose before an article concerning the same was published by petitioner's newspaper. At that time this trial judge put the entire matter into its proper perspective when he asked Mr. Farr if he would voluntarily reveal his sources of information, stating:

> "And I assure you that there is no compulsion whatever to do it. It is put on a purely voluntary basis. I won't think any the less of you or the Herald Examiner or anyone else if you say no. On the other hand, I think it would be something constructive, because I think it is important that a deliberate and willful violation of **any** court order be dealt with. That is the reason I am asking you, not out of idle curiosity." (In-Chambers Tr., October 8, 1970.) (Emphasis added.)

The fact that Judge Older thought that "it would be something constructive" or that he was of the opinion that a wilful violation of "**any** lawful court order" should be dealt with, is not sufficient to support the appellate court's determination that petitioner's First Amendment position must be balanced against a defendant's right to a fair trial. (Emphasis added.)

It is likewise respectfully submitted that the federal trial and appellate courts' implicit premise that if the First Amendment is allowed to prevail in this particular proceeding, all future publicity orders would be ineffectual, is an unfounded overstatement of this case. It suggests that not only do attorneys have a proclivity for violating court publicity orders and perjuring themselves when they do, but also ignores the other evidentiary avenues available to the court in a prosecution against those contemptuous of such court orders. It must also not be forgotten that newsmen remain subject to prosecution if they, in a conspiratorial fashion, collaborate with those acting in violation of court orders.

In summary, the lower courts have addressed themselves to the prognostication of a danger too remote and improbable to justify an abrogation of the fundamental notion that without the ability to promise confidentiality the news gathering ability of reporters is seriously retarded. We were warned in **Craig vs. Harney, supra,** that before an impairment of press freedoms will be tolerated, the danger established ". . . must not be remote or even improbable; it must immediately imperil." (67 S.Ct. 1249. at 1255.)

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PETITIONER'S CONSTITUTIONAL RIGHT TO DUE PROCESS OF LAW AND TO BE FREE FROM THE PROCESSES OF AN EX POST FACTO LAW WERE VIOLATED BY THE RETROACTIVE APPLICATION OF AN APPELLATE COURT'S DETERMINATION IN **FARR VS. SUPERIOR COURT,** 22 CAL. APP.3D, 60, 99 CAL.RPTR. 342 (1970) THAT THE CALIFORNIA IMMUNITY STATUTE WAS UNCONSTITUTIONAL IN THE PROCEEDINGS IN WHICH IT WAS INVOKED BY PETITIONER.

On October 7 and 8, 1970, petitioner, in reliance upon the First Amendment and California Evidence Code, Section 1070 promised confidentiality and acquired the Virginia Graham statement.

Judge Older, by his advice in chambers on October 8, 1970, judicially reenforced the only reasonable interpretation that could have been placed upon the then unadulterated language of that California immunity statute.[2]

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2. At the time here involved, Section 1070 read: "A publisher, editor, reporter, or other person connected with or employed upon a newspaper, or by a press association or wire service, cannot be adjudged in contempt by a court, the Legislature, or any administrative body, for refusing to disclose the source of any information procured for publication and published in a newspaper. Nor can a radio or television news reporter or other person connected with or employed by a radio or television station be so adjudged in contempt for refusing to disclose the source of any information procured for and used for news or news commentary purposes on radio or television."

At the time petitioner relied upon and invoked California Evidence Code, Section 1070 in promising confidentiality, gathering his information and in refusing to answer the questions that gave rise to his contempt adjudication, he was entitled to rely on the clear and precise wording of that legislation.

Accordingly, it is a most blatant violation of due process for petitioner to now face imprisonment because he did not anticipate that the appellate court would, more than a year later, say that a statute which read, "a . . . reporter . . . cannot be adjudged in contempt by a court" (emphasis added) does not mean that at all, but it instead means just the opposite, namely that: "a reporter will be adjudged in contempt by a court for refusing to disclose his sources of information."

The unforeseeable state court interpretation of a statute when applied retroactively so as to subject an individual to liability for past conduct that was permissible at the time he acted, deprives that citizen of fair warning of the consequences of his conduct as demanded by the due process clause of the United States Constitution. **Bouie vs. City of Columbia,** 378 U.S. 347, 84 S.Ct. 1697 (1964); **James vs. United States,** 366 U.S. 213, 81 S.Ct. 1052.

Petitioner concedes that if, as the Federal District Court erroneously reported, he refused to answer the questions at issue, asserted the immunity statute and was adjudicated to be in contempt for such refusal after the California Appellate Court found Section 1070 to be

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unconstitutional, there would be no violation of due process or of the prohibitions against ex post facto. This, however, was simply not the case.

The Court of Appeals for the Ninth Circuit determined that the District Court correctly found the record on this issue. Petitioner, however, respectfully submits that the federal trial court seriously erred and completely misconstrued the state of the record, the issue before it and petitioner's position on this matter when it commented, ". . . he was, on two occasions after his claim of privilege and immunity had been rejected by the California Appellate Courts, again afforded the opportunity to answer and thereby purge himself. His refusals **then** constitute the contempt for which he is committed. Petitioner presents no constitutional claim on this issue." (Emphasis added.)

Mr. Farr was not found in contempt after his matter had been reviewed by the California Appellate Court. Just to the contrary, he invoked the immunity statute, refused to disclose his sources of information, and on July 28, 1971, was found to be in contempt and ordered committed. It was not until December 17, 1971, that the California District Court of Appeal, unforeseeable and after the fact determined that the statutory protection afforded petitioner more than a year earlier should be cancelled and taken from him. No new or further contempt proceed-

ings were thereafter instituted.[3] It is no answer to say that petitioner knows now that he may not refuse to answer. That simply begs the issue and has no bearing upon the July 28, 1971 contempt adjudication for which he was, on August 4, 1974, sentenced and fined.

Any reporter who today invokes and acts in reliance upon California Evidence Code, Section 1070 is given fair warning of **Farr vs. Superior Court,** 22 Cal.App.3d 60, 99 Cal.Rptr. 342 (1970). This petitioner was not. He must not be punished because he could not foresee that a later appellate court ruling would completely change the meaning of the statute or that the trial judge would ultimately reverse his interpretation of that statute long after publication of the material in question occurred.

This Court, in **Raley vs. The State of Ohio,** 360 U.S. 423 (1950) admonished that:

> "To now punish for conduct which was innocent when performed would be to sanction the most indefensible sort of entrapment by the court. . . convicting a citizen for exercising a privilege or a right which the court had clearly told him was available to him."

---

3. Mr. Farr's contempt was adjudicated on July 28, 1971, as the result of his failure to answer certain questions during testimony that he gave on June 3, and July 19, 1971, in an order to show cause proceeding issued May 5, 1971. The two occasions to which the Federal District Court referred wherein Farr was again "afforded an opportunity to answer and thereby purge himself" were hearings held by Judge Older on November 16, and November 27, 1972. His continual refusal to disclose his sources on those occasions were not visited with additional contempt orders.

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III

PETITIONER WAS DENIED A HEARING BEFORE AN IMPARTIAL COURT AS DEMANDED BY THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT.

A review of the entire record that has evolved in this matter reflects that petitioner's contempt was adjudicated by a trial judge who became so intimately involved in the prosecution of petitioner and as a party in the lawsuit against him that he did not provide to the proceedings the impartial trial judge required by the Fourteenth Amendment.

The order to show cause proceeding was initiated and presided over by Judge Older approximately seven months after he questioned petitioner in his chambers and advised him prior to publication that he had a right to rely upon California Evidence Code, Section 1070 in refusing to disclose his sources of information.

Less than two months after finding petitioner's contempt in the order to show cause proceeding that he himself instituted, this same trial judge executed an affidavit in support of a new order to show cause in re contempt (see footnote 1) charging petitioner with having acted in complicity with those who violated the order. Even though Mr. Farr was acquitted of such charges when tried in December 1971 before the Honorable Bernard Jefferson, as aforesaid, Judge Older thereafter persisted in accusing him of having so acted. On

November 27, 1972, Judge Older **erroneously** reported in open court that Mr. Farr himself, testified that:

> ". . . he set out deliberately to subvert the lawful publicity order by soliciting these persons who were subject to the order to violate it. . ." (In-Chambers Tr., November 27, 1972, page 17, lines 16-19.)

It is felt that a reading of the transcripts of the hearings Judge Older conducted on November 16, and November 27, 1972, and specifically the summary and angry manner in which he ruled on various motions made by petitioner's counsel reflects the extent to which this Judge feels that he has been vilified by petitioner's refusal to violate his commitment of confidentiality.

Effort was made on petitioner's behalf in the Federal District Court to augment the record on this issue by providing Judge Older's testimony that, in an effort to develop and find petitioner's contempt, he had, on numerous occasions, from the very inception of the entire proceeding, acted in secret collaboration with the Deputy County Counsel representing respondent. This County Counsel, however, objected to providing Judge Older's testimony, representing to the Court that Judge Older was his client and that any communications concerning this case that had taken place between the two of them were privileged by virtue of their

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attorney-client relationship. The objection was sustained.[4]

The United States Supreme Court has made it abundantly clear that contempt hearings, in order to satisfy the constitutional requisite of due process, must be heard before a judge other than the prosecuting judge, unless an emergency situation pertaining to proceedings immediately pending require an instant citation and adjudication. This principle was articulated in **Mayberry vs. Pennsylvania,** 400 U.S. 455, 91 S.Ct. 499 (1971), and **Johnson vs. Mississippi,** 403 U.S. 212, 29 L.Ed.2d 423 (1971).

The critical element which disqualifies a judge in contempt proceedings and as a result of said disqualification precludes a summary disposition of the contempt matter is the existence of bias on the part of the judge. As the Court recognized in **United States vs. Meyer,** 462 Fed.2d 827 (1970), it is the **existence** of bias and not the source thereof which is controlling. In a well-reasoned opinion, which will be followed closely by petitioner in the remainder of the argument on this point, the Court in **Meyer** observed that a judge who adopts an adversary

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4. The County Counsel (Mr. William Stewart) stipulated at a hearing held in the within matter on December 1, 1972, in the Federal District Court, that he and Judge Older met on several occasions prior and subsequent to the issuance of the Findings and Order of Commitment without the presence of petitioner or his counsel. He, however, invoked the attorney-client privilege in refusing to disclose the content of their conversations concerning this proceeding.

posture vis-a-vis the alleged contemnor is disqualified and summary proceedings for contempt may not be held. The Court stated at page 841 as follows:

> "The due process requirement of disposition by an impartial judge is threatened, **not only** when the contempt is of such a personal nature as to create actual embroilment or the likelihood of personal engagement of the feelings of the trial judge, but **also when the judge adopts an adversary posture** with respect to the alleged contemnor, even if he has not been personally attacked. . ." (Emphasis added.)

It is appropriate to refocus attention on the problem as it exists in the present case: The petitioner was a witness at an investigative hearing. He refused to answer questions at said investigative hearing. He was immediately cited for contempt. However, the actual finding of contempt and the sentence imposed did not occur until nine days after the investigative hearing itself was over. Under those circumstances, and given the extent of the trial judge's participation in the initiating processes of the investigative hearing, the subsequent contempt proceedings against petitioner and the posture he maintained after learning that petitioner was no longer a reporter on the staff of the Herald Examiner, it is respectfully submitted that due process required that Judge Older disqualify himself from hearing the contempt in question. The factual questions presented, specfically on the issue of wilfullness and the availability of legislative and constitutional protections, may very

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well have been decided differently by a trial judge who was not a "client" in the action.

CONCLUSION

Based upon the foregoing authorities and arguments, it is respectfully urged that this Court issue its Writ of Certiorari in the within matter.

Respectfully submitted,

MARK HURWITZ,
Attorney for Petitioner

EXHIBIT "A"

IN THE UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

WILLIAM T. FARR,	)	
	)	CIVIL NO. 72-2858-RJK
Petitioner,	)	
	)	
v.		
	)	MEMORANDUM OF
PETER J. PITCHESS,	)	
SHERIFF OF LOS	)	DECISION
ANGELES COUNTY,	)	
	)	AND
	)	
Respondent.	)	**ORDER**

This proceeding in habeas corpus, together with an application for release of petitioner on his own recognizance, was filed November 30, 1972, by Mark E. Hurwitz, Esq., as attorney for petitioner.

At a conference in chambers on that date counsel for petitioner and William F. Stewart, Esq., Deputy County Counsel, representing respondent, agreed that there were no disputed issues of fact. It was then stipulated by counsel that an order issue forthwith directing respon-

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dent, at 9:30 A.M. on December 1, 1972, to show cause why petitioner should not be ordered discharged from the detention and restraint by respondent.

At a hearing on December 1, 1972, on the order to show cause and on petitoner's application for release on his own recognizance the respondent filed his return comprised of points and authorities in opposition and a copy of his Brief For Respondent In Opposition, theretofore filed in the Supreme Court of the United States. Counsel thereupon agreed in open court that the matter should be determined by the Court upon a record of certain agreed documents thereafter to be filed with the Court, the list of such documents being noted below. The Court thereupon denied without prejudice petitioner's application for release on his own recognizance and, agreeably to counsel, ordered that the Petition for Writ of Habeas Corpus stand submitted upon the filing with the Clerk of the Court, by counsel, of a joint certificate that all documents constituting the agreed record had been filed.

In the course of the hearing on the Order to Show Cause, petitioner and respondent again assured the court that no disputed factual issues were presented, with one possible exception. Petitioner suggested as an exception that there might be an issue of fact as to when, where and what meetings or conferences had occurred between counsel for respondent and Honorable Charles H. Older, Judge of the Superior Court of the State of California For the County of Los Angeles, during and prior to the

proceedings which resulted in the Order of Commitment which is here challenged by petitioner. Counsel for respondent offered to stipulate, which was approved by the Court, that there had been such meetings and conferences but counsel for respondent declined to disclose the conversations which occurred in this connection. The Court thereupon announced its reservation of ruling on the question of whether an evidentiary hearing should be held to elicit the substance of such conversations.

On December 4, 1972, there was filed an Amended Petition For Writ of Habeas Corpus, to which respondent, on December 8, 1972, filed his return in traverse of all claims for relief. Again it is noted that no issues of fact, with the possible exception recited above, are raised.

The parties lodged with the Clerk of the Court the Documents referred to above (or copies thereof deemed authentic) and, pursuant to certificate of counsel establishing that the record is complete, the Court is of the understanding that the full agreed record has been lodged; the entirety thereof has been fully reviewed by the Court.

The agreed record is comprised of the following:

1. REPORTER'S TRANSCRIPT OF THE HEARING BEFORE JUDGE CHARLES H. OLDER on June 30, 1971.
2. ORDER TO SHOW CAUSE and AFFIDAVIT OF JUDGE CHARLES H. OLDER, dated September 21, 1971.

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3. RESPONDENT'S ANSWER TO PETITION FOR HEARING in The Supreme Court of the State of California.
4. PETITION FOR WRIT OF CERTIORARI to the Court of Appeal of the State of California, Second Appellate District, Division One, in the Supreme Court of the United States (included are Appendices A through I):

Appendix A - Reporter's Transcript of In-Chamber's Procededings of October 8, 1970;

Appendix B - Reporter's Transcripts of Hearings of June 3, 1971, June 30, 1971, and July 19, 1971;

Appendix C - Order re Publicity filed by the Superior Court of the State of California For the County of Los Angeles on December 10, 1969, and Declaration of William Farr, executed by him on May 28, 1971.

Appendix D - Findings and Order Adjudging Contempts; Order of Commitment;

Appendix E - Order to Show Cause, dated May 5, 1971; Declaration of Donald K. Byrne and Robert K. Steinberg;

Appendix F - The Opinion of the Court of Appeal of the State of California, Second Appellate District, Division One; reported at 22 Cal. App. 3d 60 (1971);

Appendix G - Order of Court of Appeal of the State of California, Second Appellate District, Division One, Modifying Opinion and Denying Petition for Rehearing, reported at 22 Cal. App. 3d 60 (1971);

Appendix H - Order Denying Hearing - California Supreme Court;

Appendix I - California Evidence Code § 1070.

5. PETITION FOR WRIT OF HABEAS CORPUS in the Court of Appeal of the State of California, Second Appellate District, Division One.
6. PETITION FOR WRIT OF HABEAS CORPUS in the California Supreme Court;
7. SUPPLEMENTAL PETITION FOR WRIT OF HABEAS CORPUS in the California Supreme Court.
8. RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI in The United States Supreme Court.
9. REPORTER'S TRANSCRIPT OF THE HEARING BEFORE JUDGE CHARLES H. OLDER on November 17, 1972.
10. REPORTER'S TRANSCRIPT OF THE HEARING BEFORE JUDGE CHARLES H. OLDER on November 27, 1972.

From the agreed record it appears that this petition for writ of habeas corpus arises out of the trial in the Superior Court of the State of California For the County of Los Angeles of Charles Manson and his codefendants

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on charges involving two sets of multiple murders. Upon a finding by the Superior Court that "the dissemination by any means of public communication of any out-of-court statements"1/ relating to the Manson trial might prejudice the Manson defendants' right to a fair trial, Judge William B. Keene entered an Order Re Publicity effective December 10, 1969. In substance, "(t)he order prohibited any attorney, court employee, attache, or witness from releasing for public dissemination the content or nature of the testimony that might be given at trial or any evidence the admissibility of which might have to be determined by the court."2/

On October 5, 1970, a written statement by Virginia Graham, a potential witness, relating confessions made to her by her cellmate, Susan Atkins, a Manson codefendant, was obtained by Stephen R. Kay, a Deputy District Attorney assigned to the Manson case. The statement implicated Manson and revealed purported plans of the Manson "family" to murder several show business personalities. Pursuant to the trial court's order, each attorney of record and the trial court judge received one copy of the statement. No other copies were released.

Petitioner, who was then a reporter for the LOS ANGELES HERALD EXAMINER received two copies of the Graham statement on October 7, 1970. He obtained another the following day, October 8, 1970. Upon learning from Virginia Graham's attorney that Farr

possessed the statements, the Honorable Charles H. Older, who was presiding over the Manson trial, called petitioner Farr into his chambers. Before requesting Farr to reveal voluntarily his sources of the Graham statement, Judge Older stated:

"Another aspect, Mr. Farr, if I were to call you to the witness stand, for example, or someone would subpoena you to testify to these matters, you could of course assert, or refuse to disclose your news under 1070, which provides that you cannot be adjudged in contempt by a court for refusing to disclose the source of any information procured for publication and published in newspapers.

"It does not say you cannot be called. The point I'm making is this, while I could not order you, that is, effectively order you to disclose the source, there is nothing to prevent you in the interest of justice and in aid of the administration of justice from voluntarily revealing it without waiving any right in the future to assert that immunity or privilege."3/

Petitioner advised Judge Older that he would have to defer answering "because I felt it probably will be something that the company (The Los Angeles Herald Examiner) prefers that I ask the company attorney."4/ Judge Older also requested that the Herald Examiner not publish anything pertaining to any of the Manson defendants as revealed in the Graham statement. Neither request was complied with and the next day, October 9,

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1970, a story bearing Farr's by-line and entitled, "Liz, Sinatra on Slay List - Tate Witness," was published in the Herald Examiner. Included in the published articles were portions of the Graham statement theretofore ruled by the Court as inadmissible against the Manson defendants.

Seven months later, after judgment of guilty had been entered in the **Manson** case, Judge Older issued an Order to Show Cause on May 5, 1971, commanding petitioner to "show cause why he should not be compelled to disclose which person or persons released to him the transcript of the statement of Virginia Graham on or about October 8, 1970."5/

Petitioner, with his counsel, appeared at Hearings held on June 3, June 30, and July 19, 1971. Farr, no longer employed as a reporter, revealed that he had received transcripts of the Graham statement from two of the six attorneys of record in the **Manson** case and one from another source who was subject to the Order Re Publicity. Petitioner refused to identify by name or in any further manner his sources. On July 28, 1971, petitioner was found in contempt of court and was ordered committed to the Los Angeles County jail until he agreed to divulge his sources. Execution of the commitment order was stayed by order of the trial court pending appeal.

Petitioner then sought a writ of review with the California Court of Appeal. An alternative writ issued and

after oral argument a written opinion of the Court of Appeal affirmed Judge Older's Judgment of Contempt. The court based its affirmance upon its finding that California Evidence Code § 1070, if applied to grant Farr immunity, would unconstitutionally infringe upon the inherent power of the court to control its own proceedings.6/

On March 20,1972, a Petition for Hearing by the California Supreme Court was denied.7/ On July 12, 1972, a Petition for Rehearing was denied by the California Court of Appeal.8/ Thereafter, a Petition for Writ of Certiorari to the Court of Appeal, Second Appellate District, Division One, was sought before the United States Supreme Court. On November 13, 1972, that, too, was denied.9/

On November 14, 1972, Judge Charles H. Older issued an order vacating the stay of execution of the Order of Commitment and ordered Farr to appear before Judge Older on November 17, 1972, either to purge himself of contempt or surrender himself into custody pursuant to the terms of the Order of Commitment. On November 16, 1972, Farr appeared, again refused to disclose his sources of the Graham statement and was remanded into custody.

That same day, petitioner filed a Petition for Writ of Habeas Corpus with the Court of Appeal for the State of California, Second Appellate District, Division One. That court ordered Farr released on his own recognizance pending its determination. On November 21, 1972, Farr's

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habeas corpus petition was denied and Farr was ordered remanded to custody. The same day, Farr's Petition for Writ of Habeas Corpus was filed with the California Supreme Court, together with a petition to release Farr on his own recognizance pending determination of the application for the writ; the Supreme Court took no action on the pendente lite application. However, Judge Older, on November 21, 1972, issued a stay of execution of sentence and ordered Farr and the attorneys of record in the **Manson** trial to appear before him on November 27, 1972. Each attorney, under oath, denied giving Farr the statement, each denied having exacted from Farr any promise of confidentiality, and each expressly released him from any such confidentiality. Thereafter, Farr again refused to reveal his sources of the Graham statement and he was, thereupon, remanded to custody.

On November 29, 1972, the California Supreme Court denied Farr's habeas corpus petition without opinion.

On November 30, 1972, Farr filed in this Court his Petition for Writ of Habeas Corpus.

The Court has reviewed independently and in detail the entire record and finds that petitioner has failed to establish any right to relief here.

EXHAUSTION OF STATE REMEDIES

Before a United States District Court can act on any Petition for Writ of Habeas Corpus it must be satisfied that the petition, pursuant to 28 U.S.C. § 2254, is properly before the Court.

Unquestionably, petitioner is a person in custody pursuant to a Judgment of a State Court; also, he has alleged that he is in custody in violation of the Constitution of The United States of America, Additionally, 28 U.S.C. § 2254 (b) requires:

"An application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State Court shall not be granted unless it appears that the applicant has exhausted the remedies available in the courts of the State, or that there is either an absence of available State corrective process or the existence of circumstances rendering such process ineffective to protect the rights of the prisoner."

And, 28 U.S.C. § 2254 (c) provides:

"an applicant shall not be deemed to have exhausted the remedies available in the courts of the State within the meaning of this section, if he has the right under the law of the State to raise, by any available procedure, the question presented."

The above requirements of 28 U.S.C. § 2254 are based on the legislative judgment that "it would be unseemly in our dual system of government for a federal district court to upset a state court conviction without an opportunity to the State courts to correct a constitutional violation." **Darr vs. Burford,** 339 U.S. 200, 204 (1950) (overruled in other respects, **Fay v. Noia,** 372 U.S. 391 (1963). Exhaustion of remedies is a doctrine of comity and not one of jurisdiction. **Giles v. Maryland,** 386 U.S. 66 (1967).

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The petition (and amended petition) for writ of habeas corpus and the agreed record in this case must be sifted to determine what issues are here presented, and of those, which have and have not been previously raised and determined in the State courts. Considerations of comity arise in this connection.

In his amended habeas corpus petition Farr asserts the following four grounds for relief:

(a) The Order adjudging petitioner in contempt is void because he was denied a fair trial before an impartial court as required by the due process clause of the 14th Amendment.

(b) Petitioner was deprived of his First Amendment constitutional rights by being adjudged guilty of contempt for refusing to provide information that was protected by that Amendment.

(c) The record in this case reveals the most indefensible sort of entrapment by the trial judge and a shocking denial of due process — convicting petitioner for invoking an immunity which the trial judge clearly advised was available to him.

(d) Petitioner is being deprived of his liberty without due process of law because he can no longer purge himself by supplying the requested information, the court no longer having the ability to prosecute for a contempt those subject to its Order Re Publicity.

Having reviewed the record herein, the Court is satisfied that grounds (b), (c) and (d) have been fairly

presented to the California State Courts so as to meet the exhaustion prerequisite. Although it appears from the record that ground (a) was argued on direct review in briefs filed by amici curiae in the California Court of Appeal and by petitioner in his Petition for a Writ of Certiorari submitted to the United States Supreme Court, the record reveals that petitioner has never properly raised ground (a) before the California State Courts. In fact, Grant Cooper, Esq. then counsel for petitioner, at the Hearing held on June 3, 1971, expressly waived any challenge to Judge Older presiding over the contempt proceedings. Moreover, the California Court of Appeal suggested that objections by amici curiae to Judge Older presiding over the contempt proceedings were not properly before the court as no objection on that ground was made in the trial court.10/

In his amended petition for writ of habeas corpus filed with this Court petitioner asserts that ground (a) was first raised in his petition for writ of habeas corpus filed with the California Court of Appeal, Second Appellate District, Division One. In that petition for writ of habeas corpus Farr relied upon the following grounds:

> "(1) Inasmuch as the Statute of Limitations now bars a prosecution for contempt as against those persons who were subject to the Order re Publicity which was the purpose for which the Order to Show Cause proceeding, with which we are herein involved, was instituted, it is no longer in petitioner's power to

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perform the act he was previously ordered to perform. Consequently, petitioner's continued confinement is in violation of his right under the Due Process Clause of the 14th Amendment to the United States Constitution and the cases cited herein.

"(2) The petitioner has been incarcerated without Due Process of Law in that the trial court was without jurisdiction to institute contempt proceedings and to thereby convict petitioner for his refusal to answer questions that the same trial court previously advised him he had a right to refuse to answer.

"(3) The said William T. Farr was not at any time during the proceedings in question nor was he at any time during the In-Chambers Proceeding, of which was admitted into evidence in the within proceedings apprised by the trial court of his right to refuse to testify under the California Constitution or the 5th Amendment to the United States Constitution."

The second ground recited above cannot be said even remotely to equate with a contention of bias and lack of impartiality. In fact, as the argument shows,11/ Farr was not contending that Judge Older was biased or prejudiced but that Farr was entrapped by Judge Older's statements made on October 8, 1970, that he could not be forced to reveal his sources of the Graham Statement. In no sense can this be considered the substantial equivalent of a contention that the trial judge was

disqualified to hear and decide the contempt proceedings.

It appears that petitioner first presented the issue of lack of impartiality in his supplemental petition for habeas corpus filed in the California Supreme Court on November 29, 1972. Viewing petitioner's charge of bias and lack of impartiality most favorably to the petitioner, it is arguable that Judge Older's alleged bias revealed itself, for the first time, at the November 27, 1972, Hearing before Judge Older. Allegedly, Judge Older's conduct at that Hearing indicates that he had assumed an adversary posture. In retrospect, giving this revelation and the history of these proceedings, other supportive indications of impartiality may allegedly be gleaned from the record.

Assuming this to be the case, it is also arguable that Farr had no chance to raise the impartiality issue before the California courts except in his supplemental petition for habeas corpus filed with the Supreme Court of California. By November 27, 1972, the California Court of Appeal had denied Farr's petition for habeas corpus and Farr had filed his petition for habeas corpus with the California Supreme Court.

Assuming all of the above to be true, since the California Supreme Court denied Farr's petition for habeas corpus without an opinion on November 29, 1972, it is obvious that that court could not have considered Farr's allegations of impartiality filed the same day.

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Assuming the lack of impartiality issue had been considered by the California Supreme Court, the exhaustion of State remedies still would not have been satisfied. As pointed out above, the lack of impartiality issue was first raised in Farr's supplementary petition for writ of habeas corpus in the California Supreme Court. That Court denied the writ without an opinion.

California appellate courts have the discretion to refuse to exercise jurisdiction when a habeas corpus petition presents issues not raised in the appropriate lower court. See **In re Hillery,** 202 Cal. App. 2d 293, 294, 20 Cal.Rptr. 759 (1962). Thus, when a habeas corpus petition in the California Supreme Court presents an issue not raised in the California Appellate Court, as here, and the California Supreme Court denied the writ without an opinion, the Federal courts must presume that the denial was premised on the procedural deficiency and not the merits. **Rogers v. Nelson,** 300 F. Supp 421, 422(N.D. Ca. 1969); See **Baskerville v. Nelson,** 455 F. 2d 430 (9th Cir. 1972); **Turner v Lloyd,** 439 F.2d 138 (9th Cir. 1971). Consequently, this issue should not properly be considered here, even assuming that the lack of impartiality issue was presented to the California Supreme Court.

It is noted that petitioner asserted in these proceedings the right to an evidentiary hearing on the question of whether conversations between Judge Older and the Deputy County Counsel showed a disqualifying bias on

the part of the judge who made the finding of contempt and imposed the Order of Commitment. This question having been reserved by this Court it is now ordered that no such hearing is necessary or proper and that none be held. For this Court to engage in a first instance inquiry into the conduct of a State Court trial judge, where none was requested or had in the State tribunals, would constitute the grossest affront to the fundamentals of comity. If there is to be such a hearing, let it be held as a necessary part of petitioner's State remedy.

Upon a record made in the State court petitioner might conceivably have emerged with a claim of constitutional dimension as it relates to the alleged impartiality of the trial judge. If so, a California tribunal should first have had an opportunity to consider it. Thereafter, it might be appropriate for consideration here.

Even the view most favorable to petitioner of the record here and of the proferred showing of conversations between Judge Older and the Deputy County Counsel leaves him far short of such a claim. He relies on **Mayberry v. Pennsylvania,** 400 U.S. 455 (1971), and **Johnson v. Mississippi,** 403 U.S. 212 (1971). They are inopposite to the case at bar. The record here and any presumed result of an evidentiary hearing suggests no basis of personal embroilment or grievance on the part of the judge; he was neither reviled nor insulted by the contemnor. He exercised no discretion in making his order of commitment — he applied the classic and only

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appropriate order in a case of civil contempt. No constitutional question is thereby presented in this proceeding. In any event, petitioner has failed in the required exhaustion of his State remedies on this issue. **Fay v. Noia,** 372 U.S. 391 (1963).

THE ISSUES HERE CONSIDERED ON THE MERITS

The remaining issues raised by petitioner were adequately pursued in the State courts. They are now considered.

Petitioner's ground (b), as alleged in his Amended Petition For Writ of Habeas Corpus, claims the protection of the First Amendment to the United States Constitution. In effect, petitioner asserts that as a "newsman" he has a constitutional immunity against compelled disclosure of his news sources. He recognized that the Supreme Court has recently held to the contrary, **Branzburg v. Hayes,** 408 U.S. 665 (1971).

He seeks to distinguish and make inapplicable here this case by pointing out a claimed difference between Grand Jury interrogation of a newsman's sources and inquiry, as here, by a Court concerning the violation of its Order.

It appears to the Court that **Branzburg** applies here **a fortiori.** For here we have posed the question of whether, assuming some form of First Amendment protection for the newsman's source, it must not yield to a higher value, **i.e.,** to the due process guarantee of a fair trial to a defendant in a criminal case.

Sheppard v. Maxwell, 384 U.S. 333 (1966), at 359, laid upon State court trial judges in the most stringent terms the obligation in a first degree murder trial "to control the releases of leads, information and gossip to the press by police officers, witnesses and counsel for both sides." The trial court's failure to do so in **Sheppard** resulted, on a habeas corpus proceeding, in reversal by the Supreme Court twelve years after petitioner's conviction. The trial court's failure to control the dissemination of news presented a compelling case, the Court found, of the defendant's deprivation of his Fourteenth Amendment right to a fair trial. The Supreme Court in **Branzburg v. Hayes** concluded that the Grand Jury's need for a newsman's testimony was essential to **initiate** a **possible** criminal trial. How much greater is the requirment that a trial court be able to compel a newsman's disclosure to insure the Court's ability to preserve the integrity of its own process in the **conduct** of an **actual** criminal trial in accordance with the defendant's constitutional right to a fair trial.

The **Manson** trial, involving charges of two multiple murders, was the subject of much sensational notoriety. The "news" as to which petitioner claims disclosure of his source is constitutionally protected was contained in the statement of a potential witness which recited in substance:

"that Susan Atkins, a codefendant in the murder prosecution, had confessed the crimes to Mrs. Graham in

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lurid detail and implicated Manson; that the defendants planned after the murders to cross the country by bus and in the course of their travels to murder people at random; that Miss Atkins purportedly told Mrs. Graham that she and her codefendants had planned to murder a series of show business personalities each in a particularly vicious and bizarre manner; that, included in the list of intended victims were Elizabeth Taylor whose eyes were to be removed and mailed to her (ex)husband; Richard Burton who was to be castrated; that Frank Sinatra was to be skinned alive whie hanging from a meat hook, and that Tom Jones' throat was to be cut while he was engaged in an act of sexual intercourse with Miss Atkins at knife point if necessary. Steve McQueen was also mentioned as a potential victim."

See **Farr v. Superior Court,** 22 Cal.App. 3d 60, 64, 99 Cal.Rptr. 342, 344 (1971).

If some test of "lurid details" be necessary to bring the **Manson** case within the purview of **Sheppard,** the record is not lacking in this regard. No case could present a more compelling need to protect the defendant against prejudicial publicity. **Sheppard** is conclusive on petitioner's First Amendment claim. Further, as **Branzburg** makes clear — "the First Amendment does not guarantee the press a constitutional right of special access to information not available to the public generally." **Branzburg v. Hayes, supra,** at 685 (citing cases).

Petitioner claims denial of due process in that the trial judge entrapped him. He claims that his refusal to answer the questions put to him was done in reliance upon a

newsman's privilege under the California Evidence Code, of which Judge Older advised him.

The record discloses, as noted above, that Judge Older, on the day before newspaper publication of the material obtained by Farr, advised him that under the California Evidence Code there could be no compulsion for him to disclose his source. However, on the occasion some seven months later when petitioner (no longer a newsman) refused to answer concerning his source, he had the advice of counsel and the Court itself told petitioner that his refusal to answer was on pain of contempt and commitment.

The disposition of this issue by the California Court of Appeal based on an interpretation of a California Statute, its legislative history and the finding of non-application to petitioner, raises no constitutional issue here. The finding there, based on a full record, is dispositive here. Unlike **Raley v. State of Ohio,** 360 U.S. 423 (1950), where the contemnor was clearly misled, the petitioner here was found in contempt for refusing to answer questions as to which he was expressly told by the Court he had no right to refuse. He was, on two occasions after his claim of privilege and immunity had been rejected by California Appellate courts, again afforded the opportunity to answer and thereby purge himself. His refusals then constitute the contempt for which he is committed. Petitioner presents no constitutional claim on this issue.

Petitioner claims a violation of his constitutional right

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to due process of law in being required to answer questions concerning violations of the Court's Order Re Publicity because no action can now be taken against those who allegedly violated the Order.

This is a question exclusively within the competence of State tribunals. It was raised by petitioner before the California Court of Appeals in his petition for writ of habeas corpus and also in his similar petition before the California Supreme Court. Treating this issue as having been properly presented in the State courts it was there disposed of. There is no showing here that the contempt proceedings were or are moot or idle. It is for the California Courts to determine whether petitioner's responses are relevant and necessary in connection with residual significance of the Order Re Publicity and action with regard thereto. No constitutional question is presented by petitioner in connection therewith.

For all of the foregoing reasons,

IT IS ORDERED that the Petition for Writ of Habeas Corpus be and the same is hereby denied as is the application for release of petitioner on his own recognizance.

IT IS FURTHER ORDERED that the Clerk of the Court enter this Order and thereupon to serve upon counsel for petitioner and for respondent a copy thereof.

DATED: Decmeber 18, 1972

Robert J. Kelleher
United States District Judge

FOOTNOTES:

1/ ORDER RE PUBLICITY, Appendix "C", Farr's Petition For Certiorari in the United States Supreme Court at p. 163.

2/ **Farr v. Superior Court, County of Los Angeles,** 22 Cal.App. 3d 60, 63, 64, 99 Cal. Rptr. 342, 344 (1971), **hearing** denied, California Supreme Court, March 20, 1972, **cert. denied.** 41 U.S.L.W. 3274 (November 13, 1972).

3/ Reporter's In-Chamber's Transcript, October 8, 1970, Appendix "A", Petition of Certiorari in The United States Supreme Court at p. 7.

4/ **Supra,** at p. 8.

5/ ORDER TO SHOW CAUSE, May 5, 1971, Appendix "E", Petition for Writ of Certiorari in The United States Supreme Court at p. 200.

6/ **Farr vs. Superior Court, County of Los Angeles, supra,** 22 Cal.App.3d at 70, 71, 99 Cal. Rptr. at 348, 349, **hearing denied,** California Supreme Court (March 20, 1972), **cert. denied** 41 U.S.L.W. 3274 (November 13, 1972).

7/ Appendix "H", Farr's Petition for Writ of Certiorari in The United States Supreme Court at p. 226.

8/ Appendix "G", Farr's Petition for Writ of Certiorari in the United States Supreme Court at p. 225.

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9/ **Farr v. Superior Court, County of Los Angeles, supra,** 22 Cal.App.3d 60, 99 Cal. Rptr. 342 (1971), **hearing denied,** California Supreme (March 20, 1972), **cert. denied,** 41 U.S.L.W. 3274 (1972).

10/ Appendix "A", Farr's Petition for Writ of Certiorari in The United States Supreme Court at p. 29.

11/ Farr's Petition for Writ of Habeas Corpus in the Court of Appeal for the State of California, Second Appellate District, Division One, at pp. 18.21.

Exhibit B

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

WILLIAM T. FARR, *Petitioner-Appellant,* vs. PETER J. PITCHESS, Sheriff of Los Angeles County, *Respondent-Appellee.*	No. 72-3171 OPINION

[August 7, 1975]

Appeal from the United States District Court
for the Central District of California

Before: BROWNING and CHOY, Circuit Judges, and McNICHOLS,* District Judge

McNICHOLS, District Judge:

This appeal presents the no-longer novel question regarding the extent of protection afforded by the First Amendment "free press" provision to a newspaper reporter who resists judicially ordered disclosure of his news sources. William T. Farr, appellant, is a newsman who was sent to jail by a California State Court after being adjudged in contempt for refusing to name the allegedly confidential suppliers of certain information. Unsuccessful in obtaining relief in the state courts, he sought a Writ of Habeas Corpus in the United States District Court. His petition was denied and the instant appeal ensued. Jurisdiction below was based on 28 .U.S.C. §2254; our jurisdiction is found in 28 U.S.C. §1291.

The controversy initially arose against a background of the widely publicized Los Angeles trial of Charles Manson and his "family" for first-degree murder. The state trial judge, mindful of his obligation to take such steps as the circumstances required to insure a fair trial to the defendants, undertook to control the release of prejudicial information. To avoid publication of out-of-court statements, an order was promulgated prohibiting any at-

*Honorable Ray McNichols, Chief Judge, United States District Court for the District of Idaho, sitting by designation.

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torney, court attache, or witness from releasing for public dissemination the contents or nature of proposed trial testimony or other evidence.

Subsequent to the entry of this order, and during the early course of a lengthy trial, the Deputy District Attorney, having responsibility for the prosecution, obtained the written statement of one Virginia Graham, a potential witness. This statement purported to report a confession made to Graham by Susan Atkins, a Manson co-defendant. The confession, as related, implicated Manson and revealed plans by Manson and others to murder, in a most bizarre manner, several show business personalities. Pursuant to court directives, each attorney of record and the judge were provided a transcript of the Graham statement. No other copies were to be released. The court found the statements to be inadmissible as evidence against the defendants.

Enter the petitioner-appellant, William T. Farr, then a reporter for the Los Angeles Herald Examiner, assigned to cover the Manson trial. A few days after the Graham statement had been delivered to counsel and determined to be inadmissible as evidence, Farr obtained two copies, apparently from two, separate individuals. Word of this breach of security was somehow communicated to the trial judge who summoned appellant to his chambers. An extensive colloquy ensued, the details of which are not relevant here, in view of the disposition we make of the case. It is sufficient to note that Farr rejected the invitation of the judge to disclose the name or names of those from whom he received copies of the Graham statement. Farr indicated that he had promised confidentiality to the two persons involved.

The following day's edition of the Herald Examiner carried Farr's by-line over a story with full and lurid details curried from the supposed confession disclosed in the Graham statement.

Seven months later, and one month after a jury verdict against the Manson defendants had been entered, the trial judge formally ordered appellant to appear and show cause why he should not be compelled to disclose the names of the persons who had supplied him with copies of the Graham statement. The purpose of this proceeding was to uncover the identity of those persons violating the publicity order. After a series of hearings at which the then living attorneys involved each denied, under oath, having given the material to the newsman, and at which Farr continued

to refuse to answer specific questions as to identity, appellant was adjudged to be in contempt and ordered incarcerated until he divulged the names.

Appellant's brief raises four separately stated constitutional grounds for relief on each of which it is contended the trial judge erroneously ruled. We have determined that only the First Amendment issue involving the construction and effect of the free press provision merits discussion.[1]

Farr contends that, under the facts of this case, he had a right, protected by the First Amendment provision regarding free press, to refuse to disclose to the court the names of the individuals who had furnished him newsworthy information under a promise of confidentiality. In taking that position he concedes, as he must, that the persons, whose identity he protects, were, to his knowledge, forbidden by court order to supply the very information he received. It likewise must be accepted factually that the ostensible purpose of the court order was to protect the right of the Manson defendants to a fair trial, free of prejudicial publicity.

The pertinent language of the First Amendment to the Constitution of the United States provides: "Congress shall make no laws . . . abridging the freedom of speech or of the press; . . . .". Until very recent times, it was not seriously thought by most that this provision of the First Amendment gave any personal right to a newspaper reporter to keep confidential his sources of information. Historically, freedom of the press, as guaranteed by the constitution, meant absence of restrained-upon publication usually prior to publication, *i.e.*, censorship. *Near v. Minnesota*, 283 U.S. 697 (1931); *Garland v. Torre*, 259 F.2d 545 (2nd Cir. 1958).

A change has been in the making in more recent times. Several states have enacted legislation aimed at carving out a privilege

[1](a) Appellant contends he was deprived of his right to a fair trial because of the bias and prejudice of the state judge. (b) Denial of due process is predicated on a claim that the same trial judge misled and misinformed Farr as to the effect of an existing California State immunity statute. (c) Denial of due process is purportedly bottomed on an argument that, because of the running of the statute of limitations, those who furnished the information to Farr can no longer be prosecuted for disobeying the court order against publicity, and appellant should no longer be required to purge himself of contempt. To the extent that these issues were properly before the district court, that court correctly found the record was clearly contrary to appellant's contentions.

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against disclosure of news sources. The Congress of the United States has flirted with such legislation. More in point, the Supreme Court of the United States has considered the question and appears to have fashioned at least a partial First Amendment shield available to newsmen who are subjected to various demands to divulge the source of confidentially secured information. *Branzburg v. Hayes, In re Pappas,* and *United States v. Caldwell,* 408 U.S. 665 (1972), form a trilogy of cases reported together and generally hereafter terminated *Branzburg,* wherein the Supreme Court faced the question of the right of the grand jury to require disclosure by newsmen. Justice White wrote for four justices and the short concurrence of Justice Powell was needed to obtain a plurality. The *Branzburg* court dealt precisely with the First Amendment free press provision as it affected testimony sought to be produced before a grand jury. However, the opinion appears to teach broadly enough to be applied to other civil or criminal judicial proceedings as well. Recent cases have so held. *Carey v. Hume,* 492 F.2d 631 (D. C. Cir. 1974), *petition for writ of certiorari dismissed pursuant to Rule 60,* 417 U.S. 938 (1974); *United States v. Liddy,* 478 F.2d 586 (D.C. Cir. 1972); *cf. Bursey v. United States,* 466 F.2d 1059 (9th Cir. 1972) at 1090, *et seq., on motion for rehearing.*

It is clear that *Branzburg* recognizes some First Amendment protection of news sources. The language of the case likewise indicates that the privilege is a limited or conditional one. The precise holding of *Branzburg* subordinated the right of the newsmen to keep secret a source of information in face of the more compelling requirement that a grand jury be able to secure factual data relating to its investigation of serious criminal conduct.

The application of the *Branzburg* holding to non-grand jury cases seems to require that the claimed First Amendment privilege and the opposing need for disclosure be judicially weighed in light of the surrounding facts and a balance struck to determine where lies the paramount interest.

The trial judge accurately read *Branzburg* and succinctly set the issue in his well-reasoned *Memorandum of Decision and Order* (at page 183 of the Clerk's Transcript):

> "It appears to the court that *Branzburg* applies here *a fortiori.* For here we have posed the question of whether, assuming some form of First Amendment protection for

> the newsman's source, it must not yield to a higher value, *i.e.*, to the due process guarantee of fair trial to a defendant in a criminal case."

As he prepared to conduct the trial in the Manson case, the state court judge issued an order regulating certain acts of the attorneys and court personnel before him. The order, in the opinion of the judge, was necessary to preserve a fair trial for the defendants charged with a capital offense. The validity of that order was not questioned, but the order was flagrantly disobeyed. The court, in an attempt to discover which of the proscribed persons had violated the order, formally and fairly ordered the appellant to furnish the names of the violators. He unequivocally refused. This constituted a direct challenge to the power and duty of the court to protect its processes and to guarantee due process to the accused person.

Thus, the First Amendment protection announced by *Branzburg* collided head-on with a compelling judicial interest in disclosure of the identity of those persons frustrating a duly entered order of the court. Thus, also, is presented the specific question raised by this appeal—which of these conflicting rights is paramount?

In a criminal case the trial judge has a duty and obligation to attempt to protect the right of the defendants to a fair trial, free of adverse publicity. Where the case is a notorious one, that burden on the court is heavy. The most practical and recommended procedure to insure against dissemination of prejudicial information is the entry of an order directing that attorneys, court personnel, enforcement officers and witnesses refrain from releasing any information which might interfere with the right of the defendant to a fair trial. *Sheppard v. Maxwell*, 384 U.S. 333 (1966). The language of the *Sheppard* court is not equivocal. The duty of the court to enter such orders and the authority for enforcement are spelled out:

> "If publicity during the proceedings threatens the fairness of the trial, a new trial should be ordered. But we must remember that reversals are but palliatives; the cure lies in those remedial measures that will prevent the prejudice at its inception. The courts must take such steps by rule and regulation that will protect their processes from prejudicial outside interferences. Neither prosecutors, counsel for defense, the accused, witnesses, court staff nor enforcement officers

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coming under the jurisdiction of the court should be permitted to frustrate its function. Collaboration between counsel and the press as to information affecting the fairness of a criminal trial is not only subject to regulation, but is highly censurable and worthy of disciplinary measures." *Sheppard v. Maxwell, supra,* at 363.

As indicated, the purpose of eliminating collaboration between counsel and the press is to protect the constitutionally guaranteed right of the defendants in criminal cases to due process by means of a fair trial. That constitutional right cannot be so protected if the authority of the court to enforce its orders is diluted. If the newsman's privilege against disclosure of news sources is to serve as a bar to disclosure of the names of those who disobey the court order, then the court is powerless to enforce this method of eliminating encroachment on the due-process right of the defendants.

The district court properly considered the factual situation, and struck a balance between the protection afforded appellant by the First Amendment and the necessity that the newsman's source be revealed so that meaning could be given to the power and duty of the court to enter enforceable orders to protect the due-process right of accused persons. The court below concluded that the newsman's privilege must yield to the more important and compelling need for disclosure.

We hold that, under the facts presented by this record, the paramount interest to be protected was that of the power of the court to enforce its duty and obligation relative to the guarantee of due process to the defendants in the on-going trial.

Farr, therefore, was not constitutionally protected in his refusal to identify those who violated the proper order of the court. His ultimate decision to act on his mistaken belief and refusal to comply with the direct and proper questions directed to him by the court constituted contempt of a lawful order of that court. His subsequent incarceration was not in violation of any federally guaranteed constitutional right. The trial court did not err in dismissing the Petition for Writ of Habeas Corpus.

Affirmed.

EXHIBIT "C"

FINDINGS AND ORDER ADJUDGING CONTEMPTS:

SENTENCE PURSUANT TO C. C. P. 1218;

ORDER OF COMMITMENT.

Superior Court of the State of
California for the County of Los Angeles.

In the Matter of William T. Farr, In Re Contempt.
No. A 253,156.
Original Filed: 8-6-74.

This matter regularly coming on for hearing on punishment (Code of Civil Procedure Section 1218) before this court on July 29, 1974, pursuant to the court's order of June 21, 1974, and HURWITZ AND HURWITZ by MARK E. HURWITZ appearing as attorney for WILLIAM T. FARR, and argument, both oral and written, having been made on behalf of William T. Farr as to why he should not be punished for contempt and good cause appearing therefor, the court hereby finds:

/. Upon noticed motion of this court, hearings were held on June 3, 1971, June 30, 1971, July 19, 1971, November 16, 1972 and November 27, 1972, for the purpose of ascertaining the identity of the person or persons who violated the court's Order Re Publicity made

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and entered in the case of **People vs. Manson,** et al., A253,156.

2. On July 19, 1971, William T. Farr in the course of the court's inquiry, refused to answer 13 separate questions after being directly ordered by the court to answer said questions under penalty of contempt for failure to do so. Said questions and William T. Farr's statements in refusal to answer are set forth in the Findings and Order Adjudging Contempts made and entered by this court on July 28, 1971 (attached hereto as Exhibit A and incorporated herein by reference as though fully set forth). William T. Farr was held in contempt of the court for refusing to answer each of said thirteen (13) questions and on July 28, 1971, the court imposed a coercive sentence of confinement pursuant to Code of Civil Procedure Section 1219 for the purpose of compelling the compliance of William T. Farr to the court's order.

3. The California Court of Appeals in **Farr vs. Superior Court,** 22 CA3d 60, affirmed the adjudication of contempt for William T. Farr's refusal to answer the aforesaid thirteen (13) questions of the court and affirmed the imposition of the coercive sentence imposed pursuant to Code of Civil Procedure Section 1219.

4. Since the original affirmance of the contempt adjudication, William T. Farr has pursued numerous appeals. There is currently an appeal pending before the United States Court of Appeals for the Ninth Circuit, No. 73-3171. William T. Farr served 46 days in coercive confinement until released by Justice William O. Douglas

of the U. S. Supreme Court pending disposition of his appeal before the Ninth Circuit.

5. This court's inquiry into the violation of the Order Re Publicity is a continuing one and has not been terminated. There presently exists a compelling and material need for the testimony of William T. Farr identifying the violators of the court's order. This Superior Court in its memorandum decision filed on June 20, 1974, found that since the **Manson** case is still on appeal, any significant supplementation of the trial record (as this court has sought to do herein by identifying the violators of the Order Re Publicity) would still be useful. Therefore, this court finds that its inquiry is still relevant, material and viable.

6. The California Court of Appeal again upheld the adjudication of contempt in the case of **Farr v. Pitchess,** 36 CA3d 566. In this opinion, the Appellate Court ruled that if in a subsequent proceeding before the Superior Court, William T. Farr could establish that his continued incarceration pursuant to Code Civil Procedure Section 1219 would not accomplish the purpose of the order requiring him to reveal the identity of the persons who violated the trial court order prohibiting prejudicial pre-trial releases, then that commitment would cease to serve its coercive purpose.

7. On June 20, 1974, William Levit, Judge of the Superior Court presiding in Department 21 thereof, found that the order of commitment issued pursuant to Code of Civil Procedure Section 1219 was no longer coercive in

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nature as there was no substantial likelihood that the confinement would produce the desired compliance. A hearing was thereupon set for July 29, 1974, at 10:00 a.m. in Department 64 for the purpose of determining whether William T. Farr should be punished for his contempts pursuant to Code of Civil Procedure Section 1218.

8. Each and every question asked William T. Farr set forth in Exhibit A is relevant and material to the issue before the court. William T. Farr had the knowledge and ability to answer each and every question at the time it was asked and had knowledge of the court's order to answer each of said questions. William T. Farr willfully refused to answer said questions in disobedience of said orders.

9. That William T. Farr's contempts in willfully refusing to answer said questions were all committed in the immediate view and presence of the court.

10. That William T. Farr by willfully refusing to answer said relevant and material questions of the court, actively, knowingly, and willfully, interfered with and obstructed the lawful proceedings of the court.

11. During the hearings conducted on November 16th and 27th, 1972, William T. Farr was given the opportunity to purge himself of his contempts by answering the thirteen (13) questions during the hearing held on May 20th and 21st, 1974, before Judge Levit.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that William T. Farr, having committed contempts of court for his willful refusal to answer the thirteen (13) questions set forth in the Findings and Order Adjudging Contempts entered by this court on July 28, 1971, shall, in accordance with the Code of Civil Procedure Section 1218, be punished for said contempt by imprisonment in the County Jail of Los Angeles County for a period of five (5)days and shall pay a fine of $500.00. In the default of the payment of said fine of $500, William T. Farr shall be imprisoned in the County Jail of Los Angeles County for an additional period at the rate of one day for each $20.00 of said fine; said sentence is to run consecutive to the five (5) day term of imprisonment heretofore imposed, above.

IT IS FURTHER ORDERED that William T. Farr is committed to the custody of the Sheriff of Los Angeles County for execution of said sentence.

DATED: August 6, 1974

/s/ Charles H. Older

CHARLES H. OLDER
Judge of the Superior Court

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Findings and Order Adjudging Contempts Committed in the Immediate View and Presence of the Judge; Order of Commitment.

Superior Court of the State of California for the County of Los Angeles.

In the Matter of William T. Farr, In re Contempt. No. A 253,156.

Original Filed: 7-28-71.

Upon noticed motion of this Court, hearings were held on June 3, June 30, and July 19, 1971, for the purpose of ascertaining the identity of the person or persons who committed acts in violation of the Court's Order Re Publicity made and entered in the case of People vs. Manson, et al., A253,156. After considering the evidence introduced at said hearings, affidavits filed with the Court, and the Order Re Publicity, the Court makes the following findings and order:

1. On December 10, 1969, the Court made and entered an Order Re Publicity in the case of People vs. Manson, et al., A253,156. The aforesaid order specifically prohibited any attorney for any part to that case, court employees or attaches, or witnesses from releasing for public dissemination the contents or nature of testimony that might be given in the trial. This order is attached hereto as Exhibit A. The Court finds that said Order was in force at all times mentioned herein.

2. The following named persons were attorneys of record on October 7, 1970, in the case of People vs.

Manson, et al., A253,156, and at that time were subject to the provisions of the Order Re Publicity made and entered in that case:

Stephen R. Kay, Deputy District Attorney
Vincent Bugliosi, Deputy District Attorney
Donald A. Musich, Deputy District Attorney
Daye Shinn, Attorney for Susan Atkins
I. A. Kanarek, Attorney for Charles Manson
Paul J. Fitzgerald, Attorney for Patricia Krenwinkel
Ronald Hughes, Attorney for Leslie Van Houten

3. On October 5, 1970, a transcript of the proposed testimony of Virginia Graham, a prospective witness for the prosecution in the case of People vs. Charles Manson, A253,156, was prepared by Stephen R. Kay, Deputy District Attorney. This transcript was prepared prior to any testimony by Miss Graham in open court and contained statements by Miss Graham that would be her probable testimony in the proceeding. Copies of this transcript of the complete statement of Virginia Graham were made and distributed to each of the aforesaid attorneys of record in the case. Aside from the copy given to the Court, the aforesaid attorneys were the only parties who received a copy of this transcript. At the time the copies of the transcript were distributed to the attorneys of record, the admissibility of the statements therein had not been determined by the Court. In fact, certain portions of said transcript contained statements by Miss Graham that implicated Susan Atkins and other co-defendants in the case of People vs. Charles Manson, et al., A253,156, that were not subsequently testified to by Miss Graham when she testified in open court on October 10, 1970. The Order Re Publicity prohibited all of the aforesaid at-

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torneys from revealing or releasing all or any portions of said transcript for public dissemination.

4. It appeared to the Court after considering the testimony of William Farr in chambers on October 8, 1970, and upon reading the affidavits of Donald Byrne and Robert Steinberg, that the Order Re Publicity had been violated by one or more of the attorneys in the case subject to the Order and that good cause existed for a further inquiry for the purpose of ascertaining the identity of said person or persons.

On October 8, 1970, William Farr was employed as a newspaper reporter. It was not until after the conclusion of the trial in People vs. Charles Manson, et al., that the Court learned, on or about May 5, 1971, that William Farr was no longer employed as a newspaper reporter but was, in fact, currently employed by the District Attorney's Office. It therefore appeared to the Court that Mr. William Farr possessed relevant personal knowledge of the identity of said person or persons and that William Farr should be ordered to appear before the Court as a witness.

5. Upon notice duly given, hearings were held on June 3, 1971, June 30, 1971, and July 19, 1971, for the purpose of ascertaining the identity of the person or persons acting in violation of the Court's Order Re Publicity. Mr. William Farr appeared and testified pursuant to Order of the Court on June 3 and July 19, 1971, and was represented by Counsel.

6. At the hearing on June 3, 1971, Mr. Farr introduced into evidence a Declaration in which he stated that prior to October 8, 1970, he obtained from confidential sources a transcript of the complete testimony of Virginia Graham taken on October 5, 1970. Mr. Farr further stated in said Declaration that he

was no longer employed as a newspaper reporter but was presently employed as the Press Secretary for the District Attorney of Los Angeles County.

7. On June 3, 1971, Mr. Farr testified under oath in court as follows:

Reporter's Transcript, page 32, lines 20-27.

Q. "Mr. Farr, by way of clarification of the previous question, you stated in your Declaration that you obtained from confidential sources the transcript of Miss Virginia Graham's testimony. Did you receive the information from one or more of the attorneys of record in this case?

A. "Yes, I did."

8. On June 30, 1971, all of the aforesaid attorneys of record in the case of People vs. Charles Manson, et al., A253,156, with exception of Ronald Hughes, who was deceased, appeared in court and testified under oath in the matter. Each of said attorneys denied releasing or giving to William Farr any transcript of Virginia Graham's testimony of October 5, 1970.

9. On July 19, 1971, William Farr testified under oath in court as follows:

Reporter's Transcript, page 13, lines 26 thru 32, page 14, lines 1 thru 9.

Q. BY MR. STEWART: "By way of clarification, then, Mr. Farr, at least two of the sources of Virginia Graham's transcript were attorneys of record in the case of People versus Manson?

A. "That would be correct.

Q. "By attorney of record, are you referring to an attorney who is actually on the record as having made a personal appearance in this court in the case of People versus Manson?

A. "Yes. I am.

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THE COURT: "Specifically, are you referring to those six attorneys I named just a few moments ago?

A. "I am specifically referring to that group."

Reporter's Transcript, page 16, line 24, to page 17, line 3.

Q. "And all three copies of the transcript from the three different individuals you testified to were received prior to the time you wrote your article in the *Herald-Examiner* on October 9th?

A. "That is correct.

Q. "Which was also prior to the time that Virginia Graham testified in open court. Is that correct?

A. "That would be correct also."

Reporter's Transcript, page 23, line 25, to page 24, line 2.

THE COURT: "What he asked you was whether or not the two copies you received on October 7th were received from the attorneys of record in the case.

"Is that right, Mr. Stewart?

MR. STEWART: "That is correct.

THE WITNESS: "Yes, sir, they were."

Reporter's Transcript, page 45.

THE COURT: "Mr. Farr, the Los Angeles *Examiner* published the story regarding the Manson trial, and specifically based upon the statements of Virginia Graham, in October of 1970. is that true?

THE WITNESS: "Yes, your Honor, it is.

THE COURT: "Did you write that story?

THE WITNESS: "Yes, your Honor, I did.

THE COURT: "And was the information contained in that story obtained solely by you from the statements that were given to you by whoever these persons are that you have been talking about here today?

THE WITNESS: "The story is generally based on the transcript. There is some information in the article that is not contained in that transcript.

MR. COOPER: "That you obtained from another source.

THE WITNESS: "From another source or sources.

THE COURT: "Well, specifically I seem to recall that in that Los Angeles *Examiner* article there were some references to some celebrities: Elizabeth Taylor, Frank Sinatra, and some other people whose names I do not now recall.

"Were the names of these celebrities contained in the statements that you obtained from the two attorneys of record that you have testified to, and this third person, whoever that might be?

THE WITNESS: "Yes, the names of Frank Sinatra, Elizabeth Taylor, Richard Burton, Steve McQueen and Tom Jones were included in that transcript.

10. From the foregoing testimony and the affidavit of William Farr, the Court finds that the Court's order Re Publicity has been willfully violated by one or more of the individuals subject to said Order; that William Farr has personal knowledge of the identity of said persons who gave him a copy of the transcript of Vir-

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ginia Graham's proposed testimony in violation of the Order Re Publicity; and that William Farr has the present ability to reveal to the Court the identity of said persons.

11. On July 19, 1971, Mr. Farr testified under oath in court as follows:

Reporter's Transcript, page 4, lines 21-27

BY MR. STEWART:

Q. "Mr. Farr, at the hearing on June 3rd, 1971, I believe you testified that you were no longer a reporter employed by a newspaper.

A. "That is correct.

Q. "Now, is that correct today as well?

A. "That is still correct, yes."

From the foregoing testimony of Mr. Farr, the Court finds that at the time of the hearing on July 19, 1971, Mr. Farr was not a newspaper reporter connected with or employed upon a newspaper, nor was he a newspaper reporter in any capacity.

12. On July 19, 1971, while the Court was in session and while William Farr was being examined under oath as a witness, the following questions were asked Mr. Farr, and each and every question he refused to answer. In each instance as indicated below, the Court ordered Mr. Farr to answer the question and warned him that his failure to do so would be a direct contempt of the Court. Mr. Farr refused and continues to refuse to answer said questions.

Reporter's Transcript, page 8, lines 5-25

Q. BY MR. STEWART: "Did you receive them all at the same time?

A. "The answer is no.

Q. "Did you receive them all the same day?

A. "To the best of my recollection, yes.

Q. "Did the transfer take place in this building, The Hall of Justice?

A. "I respectfully decline to answer pursuant to the provisions of Section 1070 of the Evidence Code and on the further ground that it is an impingement on the First Amendment.

THE COURT: 'I order you to answer the question, Mr. Farr, under penalty of being found in contempt of Court for failing to do so.

MR. COOPER: "If your Honor please, I will stipulate that the same question has in fact been propounded to the witness again, and again, in the light of the Court's admonition, he will still respectfully decline to answer on the same grounds.

THE WITNESS: "That is correct.

THE COURT: "I find you in direct contempt of Court, Mr. Farr, for failing to answer that question—for refusing to answer that question."

Reporter's Transcript, page 16, lines 1-18.

THE COURT:

Q. "Was the third person from whom you received the statement also an attorney of record in the case?

THE WITNESS: "I respectfully decline to answer on the previously stated grounds.

THE COURT: "I can't see any basis whatever for refusing to answer that question. You already stated that two of them are attorneys of record.

"I order you to answer the question, Mr. Farr, under penalty of being found in contempt of Court for failing to do so.

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MR. COOPER: "I will stipulate that the same question has been propounded to the witness and that he has declined to answer on the same grounds, your Honor.

THE COURT: "I find you in direct contempt of Court for failing and refusing to answer that question."

Reporter's Transcript, page 18, line 25, to page 19, line 25.

Q. BY MR. STEWART: "Was the actual transcript given you by the three sources transferred to you personally, Mr. Farr?

A. "Yes, it was.

Q. "Was it a face-to-face encounter with each of the three sources?

A. "In one instance it was not.

Q. "So, in two instances it was a face-to-face encounter with the individual in question?

A. "That is correct.

Q. "In the third case was it transferred by messenger or left—

"First, was it transferred by messenger?

A. "No, it was not.

Q. "Was it left at a place where you could pick it up?

A. "Yes, it was.

Q. "Where was it left?

A. "I respectfully decline to answer the question on the grounds previously stated.

THE COURT: "I order you to answer the question, Mr. Farr, under penalty of being found in contempt of court for failing to do so.

MR. COOPER: "If your Honor please, I will stipulate that the question has been propounded

to the witness, and he has again declined to answer on the same grounds.

THE COURT: "Do you refuse to answer the question on the same grounds?

THE WITNESS: "Yes, your Honor.

THE COURT: "All right. I find you in direct contempt of court for failing and refusing to answer that question."

Reporter's Transcript, page 30, line 17 to page 31, line 3.

Q. BY MR. STEWART: "Well, then, did Mr. Fitzgerald give you a copy of the transcript of Virginia Graham's testimony?

A. "I respectfully decline to answer on the same ground as previously stated.

THE COURT: "I order you to answer the question, Mr. Farr, under penalty of being found in contempt of Court for failing to do so.

THE WITNESS: "And I must again respectfully decline to answer on the prevous grounds.

MR. COOPER: "If your Honor please, I will offer to stipulate that the same question was propounded to him, and he gave the same answer.

THE COURT: "Very well. I find you in direct contempt of Court for refusing and failing to answer that question."

Reporter's Transcript, page 33, line 20 to page 34, line 6

Q. BY MR. STEWART: "Mr. Farr, did you obtain a copy of the transcript of Virginia Graham from Mr. Shinn?

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A. "I respectfully refuse to answer that question on the grounds previously stated.

THE COURT: "I order you to answer the question, Mr. Farr, under penalty of being found in contempt of Court for failing to do so.

THE WITNESS: "I repeat the refusal on the grounds previously stated.

MR. COOPER: "I stipulate, if your Honor please, that the same question was propounded by the Court to the witness, and the witness again respectfully decline to answer the question.

THE COURT: "Very well. I find you in direct contempt of Court, Mr. Farr, for failing and refusing to answer that question."

Reporter's Transcript, page 34, lines 7-20.

Q. BY MR. STEWART: "Did you receive a copy of the transcript of Virginia Graham from Mr. Kanarek?

A. "I respectfully decline to answer on the grounds previously stated.

THE COURT: "I order you to answer that question, Mr. Farr, under penalty of being found in contempt of court for failing to do so.

THE WITNESS: "I again must respectfully decline to answer on the grounds previously stated.

MR. COOPER: "I offer to stipulate, if your Honor please, that the same question was in fact propounded to the witness, and he again declined to answer for the same reasons.

THE COURT: "Very well. I find you in direct contempt of Court for failing to answer that question, Mr. Farr."

Reporter's Transcript, page 34, line 21, to page 35, line 6.

Q. BY MR. STEWART: "Did you obtain a copy of the transcript from Mr. Kay, Mr. Farr?

A. "I respectfully decline to answer on the previously stated grounds.

THE COURT: "I order you to answer the question, Mr. Farr, under penalty of being found in contempt of Court for failing to do so.

THE WITNESS: "I again respectfully decline to answer on the previously stated grounds.

MR. COOPER: "I stipulate, if your Honor please, that the same question was again propounded to the witness, and he again respectfully declined to answer on the same grounds.

THE COURT: "I find you in direct contempt of Court, Mr. Farr, for failing to answer that question."

Reporter's Transcript, page 35, lines 7-21

Q. BY MR. STEWART: "Did you receive a copy of the transcript of Virginia Graham's testimony from Mr. Bugliosi?

A. "I respectfully decline to answer on the previously stated grounds.

THE COURT: "I order you to answer the question, Mr. Farr, under penalty of being found in contempt of Court for failing to do so.

THE WITNESS: "Your Honor, I must again respectfully decline to answer on the previously stated grounds.

MR. COOPER: "I stipulate, if your Honor please, that the same question was again pro-

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pounded to the witness, and the witness again respectfully declined to answer on the same grounds.

THE COURT: "I find you in direct contempt of Court, Mr. Farr, for failing to answer that question."

Reporter's Transcript, page 35, line 22 to page 36, line 7.

Q. BY MR. STEWART: "Did you obtain a copy of the transcript of Virginia Graham's testimony from Mr. Musich?

A. "I respectfully decline to answer the question on the previously stated grounds.

THE COURT: "I order you to answer the question, Mr. Farr, under penalty of being found in contempt of Court for failing to do so.

THE WITNESS: "I again must respectfully decline on the previously stated grounds.

MR. COOPER: "I stipulate that the same question was again propounded to the witness, and the witness again respectfully declined to answer for the same reasons.

THE COURT: "I find you in direct contempt of Court, Mr. Farr, for failing to answer the question."

Reporter's Transcript, page 36, lines 8-23

Q. BY MR. STEWART: "Mr. Farr, who were the parties that were the sources of the transcripts of the testimony of Virginia Graham that you received on October 7th and October 8th, 1970?

A. "I respectfully decline to answer on the previously stated grounds.

THE COURT: "I order you answer that question, Mr. Farr, under penalty of being found in contempt of Court for failing to do so.

THE WITNESS: "I must again respectfully decline to answer on the previously stated grounds.

MR. COOPER: "Stipulate that the same question was again propounded to the witness, and the witness again gave the same answer for the same reasons.

THE COURT: "I find you in direct contempt of Court for failing to answer that question, Mr. Farr."

Reporter's Transcript, page 40, line 18 to page 41, line 22

MR. STEWART: "Let me ask you a question that is limited directly then to the Virginia Graham transcript incident.

Q. "Did you have a discussion with any of the attorneys of record to the effect that if they gave you a copy of Virginia Graham's testimony, you would not reveal the source of the information?

MR. COOPER: "I would object to that, if your Honor please, on the ground it has been asked and answered.

"The witness has stated in connection with at least three occasions, with three attorneys of record, he did have such conversations.

THE COURT: "I think it's been covered, Mr. Stewart.

Q. BY MR. STEWART: "Which attorney was it then, Mr. Farr?

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A. "I respectfully decline to answer on the grounds as previously stated.

MR. COOPER: "I think that has implicitly been asked and answered before, if your Honor please.

THE COURT: "Well, I will order Mr. Farr to answer that question, and I will change the question slightly.

"Which attorney or attorneys was it?

THE WITNESS: "Again, your Honor, I must respectfully decline to answer on the grounds previously stated.

THE COURT: "I order you to answer that question, Mr. Farr, under penalty of being found in contempt of Court for failing to do so.

THE WITNESS: "And I reiterate that I must refuse or decline to answer on the grounds previously stated.

MR. COOPER: "I will stipulate that it may be deemed that the same question has been propounded to the witness, and he has again respectfully declined to answer on the same grounds.

THE COURT: "I find you in direct contempt of Court, Mr. Farr, for failing to answer that question."

Reporter's Transcript, page 41, line 23 to page 42, line 15.

MR. STEWART: "I have no further questions, your Honor.

MR. COOPER: "Does your Honor have any questions?

THE COURT: "Yes I do, Mr. Cooper.

"Did you receive any of the Virginia Graham

statements, Mr. Farr, from someone who was an associate of an attorney of record in the case?

MR. COOPER: "May I check—if your Honor please.

"I think you'd better decline to answer that.

THE WITNESS: "I respectfully decline to answer the question on the grounds as previously stated.

THE COURT: "I order you to answer that question, Mr. Farr, under penalty of being found in contempt of Court for failing to do so.

THE WITNESS: "I repeat my declination to answer on the previously stated grounds.

MR. COOPER: "I will stipulate, if your Honor please, that the same question was propounded to the witness, and he again declined to answer for the reasons heretofore stated.

THE COURT: "I find you in direct contempt of Court, Mr. Farr, for failing to answer that question."

Reporter's Transcript, page 42, line 16 to page 43, line 3.

THE COURT: "Did you receive a copy of the Virginia Graham statement from anyone in the Office of the District Attorney of Los Angeles County other than the attorneys of record in this case, Mr. Bugliosi, Mr. Kay and Mr. Musich?

THE WITNESS: "I respectfully decline to answer on the previously stated grounds.

THE COURT: "I order you to answer that question, Mr. Farr, under penalty of being found in contempt of Court for failing to do so.

BLEED THROUGH

THE WITNESS: "I again repeat my refusal on the previously stated grounds.

MR. COOPER: "I will stipulate, if your Honor please, that the same question was put to the witness, and he again respectfully declined to answer for the same reasons.

THE COURT: "I find you in direct contempt of Court for failing to answer that question, Mr. Farr."

The Court finds that each and every question asked William Farr as set forth above was relevant and material to the issue before the Court; that William Farr had the knowledge and ability to answer each and every question at the time it was asked; that William Farr had knowledge of the Court's Orders to answer said questions; and that William Farr willfully refused to answer said questions in disobedience of said orders. The Court finds that at the time the above questions were asked, Mr. Farr was not a reporter connected with or employed upon a newspaper, nor a reporter in any capacity, and that he is not entitled to claim immunity provided in Evidence Code Section 1070 and, further, that he is not entitled to refuse to answer the above questions on the basis of either Evidence Code Section 1070 or the First Amendment to the United States Constitution.

13. On June 3, 1971, William Farr testified under oath as follows:

Reporter's Transcript, page 10, line 25 to page 11, line 17

Q. BY MR. STEWART: "Now, Mr. Farr, were you covering the trial for the *Herald-Examiner* from its very beginning?

A. "Yes, I did.

Q. "And you were familiar with the Order Re Publicity issued by the Court?

A. "Yes, I was.

Q. "Did you know whether or not the source of your information, as stated in your Declaration, was subject to the Order Re Publicity at the time he gave you the transcript?

A. "May I confer with counsel?

THE COURT: "Yes."

(Off the record discussion between the witness and Mr. Cooper.)

MR. COOPER: "May we have that question re-read?

THE COURT: "Read the question."

(Whereupon the reporter reads the pending question.)

THE WITNESS: "I think I can answer that by stating that I was aware that the attorneys in the case were subject to the gag order."

On July 19, 1971, William Farr testified under oath as follows:

Reporter's Transcript, page 17, line 23 to page 19, line 5.

MR. STEWART: "I don't believe I asked him if the source of the information knew he was subject to the order. I wanted to know if Mr. Farr knew the person was one of the parties covered by the order.

MR. COOPER: "I would stipulate, if your Honor please, that he was covered by the order.

THE WITNESS: "I misunderstood the question. Yes, I did know that.

BLEED THROUGH

Q. BY MR. STEWART: "You know that the third source of information was covered by the Court's Order Re Publicity?

A. "I presume so. Yes, I did have knowledge."

Reporter's Transcript, page 20, lines 3-15.

Q. "In any of the three cases, three instances where you received a copy of the transcript, did you initially contact the source and request a copy of the transcript, or did the source first contact you?

MR. COOPER: "Pardon me, if your Honor please, I think I want to state this on the record with your permission.

"I have instructed the witness that he could decline to answer this question on the ground that his testimony might tend to incriminate him, but he decided to waive that. I shouldn't say waive it, but he is not going to urge that ground.

THE WITNESS: "In all three instances, I made the initial approach."

Reporter's Transcript, page 9, line 11 to page 10, line 12.

Q. BY MR. STEWART: "Mr. Farr, in your Declaration that you filed on May 28th, 1971, you stated that you gave your explicit promise to said sources that 'I would never divulge the source of my information, and, implicitly, the promise of my said newspaper."

"Is that statement correct?

A. "Yes, it is.

Q. "Did you give this exclusive promise face to face with the source of the information?

A. "The answer would not be the same to all parties involved.

Q. "Well, to any of the parties involved, was your promise made face to face with that person?

A. "Yes, it was.

Q. "As to how many of those parties was your promise made face to face?

A. "Two of the three.

Q. "And was the third one made by telephone or some means of communication?

A. "This was made by telephone.

Q. "And were these promises made prior to the receipt of the transcript of Virginia Graham?

A. "Either prior to or—

MR. COOPER: "—contemporaneously?

THE WITNESS: "—contemporaneously. I don't specifically recall, but certainly within a very short period of time.

Q. BY MR. STEWART: "But as to all three of the sources of your transcript, you did make an explicit promise not to reveal the source?

A. "Yes, sir, that is correct."

Reporter's Transcript, page 24, line 28 to page 25, line 9.

Q. "When you received the copies from the source or sources, rather from all three sources, was it with the understanding between you and the source that you would make a copy of that transcript and return the original to the party?

A. "Yes, it was.

BLEED THROUGH

Q. "Did all three sources insist on that as a condition for giving you the transcript?

A. "I don't believe so. I think I simply suggested that that would be the best method."

14. From the foregoing testimony of William Farr, as well as from the testimony set forth elsewhere in this Order, the Court finds that William Farr at all times had knowledge that each of the parties from whom he received the transcript of Virginia Graham's testimony of October 5, 1970, were subject to the Order Re Publicity and had knowledge that by giving him said transcript said parties willfully violated the Order Re Publicity in contempt of the Court. The Court further finds that William Farr, with full knowledge that each of the parties that released to him a copy of the transcript was subject to the Order Re Publicity and was specifically prohibited by said Order from releasing or revealing to him the contents of said transcript, actively solicited and requested each of said parties to give him a copy of said transcript in violation of said Order Re Publicity. The Court further finds that William Farr entered into an explicit agreement with each of said parties wherein he promised each of them that he would, if they gave him a copy of the transcript of Virginia Graham's testimony, refuse to reveal the source of said transcripts and would conceal the identity of each of said persons acting in willful violation of the Court's lawful Order Re Publicity. By so doing, the Court finds that William Farr, knowingly and willfully, actively aided, assisted, abetted and participated with each of said parties in procuring the copies of said transcript in violation of the Court's Order Re Publicity.

15. The Court finds that William Farr, by soliciting the transcripts as aforesaid and by assisting and participating with said persons subject to the Order Re Publicity who were committing acts in violation of said Lawful Order, willfully and knowingly interfered with the proceedings and lawful orders of the Court which the Court finds in each instance interfered with the due administration of justice.

16. The Court finds that William Farr, by committing the acts as set forth above, and by soliciting a willful violation of a lawful court order, and by assisting and participating with three parties subject to the lawful Order of the Court in willfully violating said Order, may not now refuse to disclose the identities of said parties when ordered to do so by the Court and is not entitled to refuse to answer said questions or to claim or be entitled to an immunity pursuant to the provisions of Evidence Code Section 1070 regardless of his status as a reporter on the date he received the transcripts or any other date and time mentioned in these Findings and Order.

17. THE COURT HEREBY FINDS AND IT IS ORDERED, ADJUDGED AND DECREED that William Farr, by his willful refusal to answer each of the aforesaid questions set forth in paragraph 12 herein in disobedience of the Court's orders to do so and with full knowledge of said orders, committed as to each question that he refused to answer a separate, direct contempt of the Court in the immediate view and presence of the judge; William Farr is hereby held to be in direct contempt of the Court for each and every question that he willfully refused to answer as set forth in paragraph 12 herein.

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18. The Court finds that William Farr has the present ability and power to perform the act, or acts, of answering each of the aforesaid questions that he has refused to answer; that since each of said contempts by William Farr consists of an omission to perform an act which is yet in the power of William Farr to perform, it is THEREFORE ORDERED, ADJUDGED AND DECREED that William Farr be imprisoned until he shall consent to appear in court and to answer under oath each and every question specifically set forth below, and as specifically set forth in the following Order of Commitment.

CONTEMPT FINDING NUMBER ONE

Q. Did the transfer (of the transcripts you received from the parties subject to the Order Re Publicity) take place in this building, The Hall of Justice?

CONTEMPT FINDING NUMBER TWO

Q. Was the third person from whom you received the statement (transcript of Virginia Graham's testimony on October 5, 1970) also an attorney of record in the case?

CONTEMPT FINDING NUMBER THREE

Q. Where was the copy of the transcript of Virginia Graham's testimony of October 5, 1971, that was not personally given to you by the source, left for you to pick up?

CONTEMPT FINDING NUMBER FOUR

Q. Did Mr. Fitzgerald give you a copy of the transcript of Virginia Graham's testimony?

CONTEMPT FINDING NUMBER FIVE

Q. Did you obtain a copy of the transcript of Virginia Graham from Mr. Shinn?

CONTEMPT FINDING NUMBER SIX

Q. Did you receive a copy of the transcript of Virginia Graham from Mr. Kanarek?

CONTEMPT FINDING NUMBER SEVEN

Q. Did you obtain a copy of the transcript from Mr. Kay?

CONTEMPT FINDING NUMBER EIGHT

Q. Did you receive a copy of the transcript of Virginia Graham's testimony from Mr. Bugliosi?

CONTEMPT FINDING NUMBER NINE

Q. Did you obtain a copy of the transcript of Virginia Graham's testimony from Mr. Musich?

CONTEMPT FINDING NUMBER TEN

Q. Who were the parties that were the sources of the transcripts of the testimony of Virginia Graham that you received on October 7th and October 8th, 1970?

CONTEMPT FINDING NUMBER ELEVEN

Q. Which attorney or attorneys of record was it that you told that you would not reveal the source if they gave you a copy of the transcript of Virginia Graham's testimony?

CONTEMPT FINDING NUMBER TWELVE

Q. Did you receive any of the Virginia Graham statements from someone who was an associate of an attorney of record in the case?

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CONTEMPT FINDING NUMBER THIRTEEN

Q. Did you receive a copy of the Virginia Graham statement from anyone in the Office of the District Attorney of Los Angeles County other than the attorneys of record in this case, Mr. Bugliosi, Mr. Kay or Mr. Musich?

DATED: 7-28-71.

CHARLES H. OLDER
Judge of the Superior Court

19. Pursuant to the foregoing Findings and Orders, the Court hereby makes and issues the following Order of Commitment:

ORDER OF COMMITMENT

The People of the State of California to the Sheriff of Los Angeles County:

WHEREAS on July 19, 1971, during a hearing set by the Court and in the immediate view and presence of the Court, and while the Court was in session, William Farr was duly sworn as a witness and, while being examined as a witness, he refused to answer each of the material and relevant questions set forth in paragraph 12 herein, notwithstanding he was then and there ordered by the Court to answer said questions, and he still willfully refuses to answer said questions, and

WHEREAS the Court, by these Findings and Orders, has adjudged and decreed that William Farr is guilty of a separate, direct contempt of the Court on each and every instance that he willfully refused to answer the questions set forth herein and has ordered that William Farr be imprisoned, pursuant to CCP

§1219, in the County Jail of Los Angeles County until he consents to appear in court and answer under oath each and every question set forth below.

QUESTION NUMBER ONE

Did the transfer (of the transcripts you received from the parties subject to the Order Re Publicity) take place in this building, The Hall of Justice?

QUESTION NUMBER TWO

Was the third person from whom you received the statement (transcript of Virginia Graham's testimony on October 5, 1970) also an attorney of record in the case?

QUESTION NUMBER THREE

Where was the copy of the transcript of Virginia Graham's testimony of October 5, 1971, that was not personally given to you by the source, left for you to pick up?

QUESTION NUMBER FOUR

Did Mr. Fitzgerald give you a copy of the transcript of Virginia Graham's testimony?

QUESTION NUMBER FIVE

Did you obtain a copy of the transcript of Virginia Graham from Mr. Shinn?

QUESTION NUMBER SIX

Did you receive a copy of the transcript of Virginia Graham from Mr. Kanarek?

QUESTION NUMBER SEVEN

Did you obtain a copy of the transcript from Mr. Kay?

QUESTION NUMBER EIGHT

Did you receive a copy of the transcript of Virginia Graham's testimony from Mr. Bugliosi?

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QUESTION NUMBER NINE

Did you obtain a copy of the transcript of Virginia Graham's testimony from Mr. Musich?

QUESTION NUMBER TEN

Who were the parties that were the sources of the transcripts of the testimony of Virginia Graham that you received on October 7th and October 8th, 1970?

QUESTION NUMBER ELEVEN

Which attorney or attorneys of record was it that you told that you would not reveal the source if they gave you a copy of the transcript of Virginia Graham's testimony?

QUESTION NUMBER TWELVE

Did you receive any of the Virginia Graham statements from someone who was an associate of an attorney of record in the case?

QUESTION NUMBER THIRTEEN

Did you receive a copy of the Virginia Graham statement from anyone in the Office of the District Attorney of Los Angeles County other than the attorneys of record in this case, Mr. Bugliosi, Mr. Kay or Mr. Musich?

Now, therefore, you are required and commanded to forthwith attach the said William Farr and commit him to the Los Angeles County Jail and detain him there until he consents to appear in court and answer under oath each and every question set forth above or until he is discharged according to law.

The Court, on this 28th day of July, 1971, hereby signs and orders entered the foregoing FINDINGS AND ORDER ADJUDGING CONTEMPTS COMMITTED IN THE IMMEDIATE VIEW AND PRESENCE OF THE JUDGE; ORDER OF COMMITMENT.

CHARLES H. OLDER
Judge of the Superior Court

Order Re Publicity.

Superior Court of the State of California for the County of Los Angeles.

People of the State of California, Plaintiffs, vs. Charles Manson, et al., Defendants. No. A 253156.

Filed: Dec. 10, 1969.

It is apparent, and this Court is going to take judicial notice of the fact, that this case has received extensive news media coverage as a direct result of its apparent public interest; further, it is equally apparent to this Court by reading various newspapers and weekly periodicals that this news media coverage is not limited to the County of Los Angeles, but has been extensive not only in the entire State of California but in the Nation as well, and of this fact the Court now takes judicial notice. This Court is of the firm conviction that the impossible task of attempting to choose between the constitutional guarantees of a free press and fair trial need not be made, but that they are compatible with some reasonable restrictions imposed upon pretrial publicity. It further appears to the Court that the dissemination by any means of public communication of any out-of-court statements relating to this case may interfere with the constitutional right of the defendants to a fair trial and disrupt the proper administration of justice. Some of the defendants now being for the first time before this Court, this Court now exercises its jurisdiction and assumes its duty to do everything within its constitutional powers to make certain that each defendant does receive a fair trial, and now issues the following orders, a violation of which will be considered as a contempt of this Court

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and will result in appropriate action to punish for such contempt.

It is the order of this Court that no party to this action, nor any attorney connected with this case as defense counsel or as prosecutor, nor any other attorney associated with this case, nor any judicial attache or employee, nor any public official now holding office, including but not limited to any chief of police or any sheriff, who has obtained information related to this action, which information has not previously been disseminated to the public, nor any agent, deputy, or employee of any such persons, nor any grand juror, nor any witness having appeared before the Grand Jury in this matter, nor any person subpoenaed to testify at the trial of this matter, shall release or authorize the release for public dissemination of any purported extra judicial statement of the defendant relating to this case, nor shall any such persons release or authorize the release of any documents, exhibits, or any evidence, the admissibility of which may have to be determined by the Court, nor shall any such person make any statement for public dissemination as to the existence or possible existence of any document, exhibit, or any other evidence, the admissibility of which may have to be determined by the Court. Nor shall any such persons express outside of court an opinion or make any comment for public dissemination as to the weight, value, or effect of any evidence as tending to establish guilt or innocence. Nor shall any such persons make any statement outside of court for public dissemination as to the weight, value, or effect of any testimony that has been given. Nor shall any such persons issue any statement for public dissemination as to the identity of any prospective witness, or his probable testimony,

or the effect thereof. Nor shall any such person make any out-of-court statement for public dissemination as to the weight, value, source, or effect of any purported evidence alleged to have been accumulated as a result of the investigation of this matter. Nor shall any such person make any statement for public dissemination as to the content, nature, substance, or effect of any testimony which may be given in any proceeding related to this matter, except that a witness may discuss any matter with any attorney of record or agent thereof.

This does not include any of the following:

1. Factual statements of the accused person's name, age, residence, occupation, and family status.

2. The circumstances of the arrest, namely, the time and place of the arrest, the identity of the arresting and investigating officers and agencies, and the length of the investigation.

3. The nature, substance, and text of the charge, including a brief description of the offenses charged.

4. Quotations from, or any reference without comment to, public records of the Court in the case, or to other public records or communications heretofore disseminated to the public.

5. The scheduling and result of any stage of the judicial proceeding held in open court in an open or public session.

6. A request for assistance in obtaining evidence.

7. Any information as to any person not in custody who is sought as a possible suspect or witness, nor any statement aimed at warning the

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public of any possible danger as to such person not in custody.

8. A request for assistance in the obtaining of evidence or the names of possible witnesses.

Further, this order is not intended to preclude any witness from discussing any matter in connection with the case with any of the attorneys representing the defendant or the People, or any representative of such attorneys.

It is further the order of the Court that the Grand Jury transcripts in this case not be disclosed to any person (other than those specifically mentioned in Penal Code Section 938.1) until 10 days after a copy thereof has been delivered by this Court to each defendant named in the indictment; provided, however, that if any defendant, during such time, shall move the Court that such transcript, or any portion thereof, not be available for public inspection pending trial, such time shall be extended subject to the Court's ruling on such motion.

It is further ordered that a copy of this order be attached to any subpoena served on any witness in this matter, and that the return of service of the subpoena shall also include the fact of service of a copy of this order.

This order shall be in force until this matter has been disposed of or until further order of Court.

Dated: December 10, 1969.

/s/ William B. Keene
William B. Keene
Judge of the Superior Court

Exhibit D

SUPREME COURT OF THE UNITED STATES

No. A–705

William T. Farr, *v.* Peter J. Pitchess, Sheriff of Los Angeles County, California.	Application for Release on Own Recognizance or Bail Pending Appeal in United States Court of Appeals for the Ninth Circuit.

[January 11, 1973]

MR. JUSTICE DOUGLAS, Circuit Justice.

Petitioner Farr was a reporter for the Los Angeles Herald Examiner and published stories about the *Manson* trial, which was greatly publicized during the trial. The trial judge in the case had issued orders barring the litigants and their lawyers from giving certain information to the press. When the *Manson* trial was ended, the trial judge summoned Farr and asked him what the sources of his information were. Farr acknowledged that he had received the news story from two of the six attorneys of record in the *Manson* case and some of it from another individual who was subject to the order concerning publicity but who was not an attorney. Farr refused to disclose the names and was committed to prison for civil contempt. He obtained no relief in the state courts[1] and then brought federal habeas corpus which the District Court denied and, pending his appeal to the Ninth Circuit Court of Appeals, he has applied to me for bail or release on personal recognizance.

[1] The opinion of the California Court of Appeals, Second Appellate District, is reported in 22 Cal. App. 3d 60. The Supreme Court of California denied a hearing on March 27, 1972. This Court denied certiorari on November 13, 1972. 408 U. S. —.

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Like the three cases decided in *Branzburg* v. *Hayes*, 408 U. S. 665, the present case involves civil, not criminal, contempt. *Branzburg*, however, involved refusal of a reporter to testify before a grand jury and reveal the sources of his news stories. The federal rule is that just as the power of Congress to commit a recalcitrant witness for civil contempt ends with the adjournment of that Congress, *Anderson* v. *Dann*, 6 Wheat. 204, 231, so does the power of the grand jury. *Shillitani* v. *United States*, 384 U. S. 364, 370–372.

What rule obtains in California is not clear; but it is intimated that theoretically at least imprisonment for civil contempt could be for life.

The commitment is defended on the ground that the trial court, armed with power to keep the trial free from prejudicial publicity, *Sheppard* v. *Maxwell*, 384 U. S. 333, has authority to discipline those who violated its order barring release of publicity. The necessity to make Farr talk was therefore held to be compelling.

California has a statute protecting a newsman from disclosing his sources of news and barring a court from holding him in contempt for refusal to disclose.[2] But the Court of Appeals held that it was inapplicable to the instant case because, while Farr was a newsman at the time he wrote the story, he had left that employment when he was questioned by the trial judge.

It is argued, in return, that the remedy of criminal contempt against those subject to the trial court's pub-

[2] Calif. Evid. Code § 1070 provides:

"A publisher, editor, reporter, or other person connected with or employed upon a newspaper, or by a press association or wire service, cannot be adjudged in contempt by a Court, the legislature, or any administrative body, for refusing to disclose the source of any information procured for publication and published in a newspaper. Nor can a radio or television news reporter or other person connected with or employed by a radio or television station be so adjudged in contempt for refusing to disclose the source of any information procured for and used or news commentary purposes on radio or television."

licity order is now out of reach because of the running of the statute of limitations on criminal contempt [3] and therefore that the present civil contempt proceedings against Farr serve no legitimate state interest. I have received a response from respondent which says that this is "purely a matter of state concern"—that "there is no statute of limitations" in California for civil contempts. Whether this means that Farr could be imprisoned for life is not clear.

What the merits of the case may be is not in my province at this stage. The only question is whether the issue presented is a substantial one. Our *Branzburg* decision plainly does not cover it. Our denial of certiorari imparts no implication or inference concerning the Court's view of the merits, as Mr. Justice Frankfurter made clear in *Maryland* v. *Baltimore Rodeo Show Inc.*, 338 U. S. 912, 919.

The question, so far as I can tell, is not covered by any of our prior decisions. The case is a recurring one where the interests of a fair trial sometimes collide with the requirements of a free press. A fair trial requires that a jury be insulated from the barrage of prejudicial news stories that is sometimes laid down on the courtroom. It is said that in the present case the *Manson* jury was sequestered and so not subject to the kind of influence we condemned in *Sheppard* v. *Maxwell*.

The issue is not free from doubt. Yet since the precise question is a new one not covered by our prior decisions, I have concluded in the interest of justice to release Farr on his personal recognizance pending decision of his habeas corpus case by the Court of Appeals.

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[3] Calif. Pen. Code § 166 provides that willful disobedience of a lawfully issued court order is a misdemeanor. Calif Pen. Code § 801 provides a one year period of limitation from the commission of the crime to the filing of the indictment, information, or complaint.

BLEED THROUGH

EXHIBIT "E"

ORDER STAYING ISSUANCE OF MANDATE

United States Court of Appeals for the Ninth Circuit.

William T. Farr, Petitioner-Appellant, vs. Peter J. Pitchess, Sheriff of Los Angeles County, Appellee. No. 72-3171. DC# 72-2858.

Filed: 8-22-75.

Upon application of Mark Hurwitz, Esq. counsel for the Appellant, and good cause appearing, IT IS ORDERED that the issuance, under Rule 41(a) of the Federal Rules of Appellate Procedure, of the certified copy of the judgment of this Court in the above cause be and hereby is stayed pending the filing, consideration and disposition by the Supreme Court of the United States of a petition for writ of certiorari to be made by the Appellant herein, provided such petition is filed in the Clerk's Office of the Supreme Court of the United States on or before September 19, 1975.

In the event the petition for writ of certiorari is granted, then this stay is to continue pending the final disposition of the case by the Supreme Court of the United States.

/s/ Ray McNichols

RAY MC NICHOLS
United States District Judge

DATED: SAN FRANCISCO, CALIF.

Exhibit F

"*Newsman's refusal to disclose news source.* A publisher, editor, reporter, or other person connected with or employed upon a newspaper, or by a press association or wire service, cannot be adjudged in contempt by a court, the Legislature, or any administrative body, for refusing to disclose the source of any information procured for publication and published in a newspaper.

Nor can a radio or television news reporter or other person connected with or employed by a radio or television station be so adjudged in contempt for refusing to disclose the source of any information procured for and used for news or news commentary purposes on radio or television."

California Evidence Code, Section 1070.

BLEED THROUGH

EXHIBIT "G"

Opinion of the Court of Appeal.

In the Court of Appeal of the State of California, Second Appellate District, Division One.

William T. Farr, Petitioner, v. The Superior Court of the State of California, County of Los Angeles, Respondent. 2d Civ. No. 38961.

Filed: Dec. 17, 1971.

PROCEEDING to review an order of the Superior Court of Los Angeles County. Order affirmed.

Cooper and Nelson and Grant B. Cooper for Petitioner.

John D. Maharg, County Counsel, and William F. Stewart, Deputy County Counsel, for Respondent.

Robert C. Lobdell, Gibson, Dunn & Crutcher, and Robert S. Warren, for Amicus Curiae The Times Mirror Company.

Dean Lesher for Amicus Curiae California Newspaper Publishers Association.

George R. Johnson for Amicus Curiae Twin Coast Newspapers, Inc.

Flint & Mac Kay, Edward L. Compton and Edwin Freston for Amicus Curiae Hearst Corporation.

Jack B. Purcell, William Whitsett, McCutchen, Black, Verleger & Shea, and Howard J. Privett for Amicus Curiae Columbia Broadcasting System, Inc.

Bodle, Fogel, Julber & Reinhardt, George E. Bodle, Daniel Fogel and Stephen Reinhardt for Amicus Curiae Newspaper Guild, AFL-CIO, CLC.

Earl Klein for Amicus Curiae Sigma Delta Chi.

This is a petition for writ of review of an order of respondent court adjudging petitioner Farr to be in con-

tempt for failing to answer questions put to him. We conclude that the trial court properly found petitioner to be in contempt of court.

The matter at bench is an outgrowth of the trial of Charles Manson and his codefendants for two sets of multiple murders. The crimes themselves and the ensuing trial were the subjects of much sensational notoriety. Early in the proceedings the superior court entered an Order re Publicity. That order prohibited any attorney, court employee, attache, or witness from releasing for public dissemination the content or nature of any testimony that might be given at trial or any evidence the admissibility of which might have to be determined by the court. The order became effective December 10, 1969, and remained in effect throughout the trial.

On October 5, 1970, during the course of the trial, Stephen R. Kay, one of the deputy district attorneys assigned to the prosecution of the Manson case, obtained a written statement from Mrs. Virginia Graham, a potential witness. The statement recites that Susan Atkins, a codefendant in the murder prosecution, had confessed the crimes to Mrs. Graham in lurid detail and implicated Manson. It states that the defendants planned after the murders to cross the country by bus and in the course of their travels to murder people at random. Miss Atkins purportedly told Mrs. Graham that she and her codefendants had planned to murder a series of show business personalities each in a particularly vicious and bizarre manner. Included in the list of intended victims were Elizabeth Taylor whose eyes were to be removed and mailed to an exhusband, Richard Burton who was to be castrated, Frank Sinatra who was to be skinned alive while hang-

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ing from a meat hook, and Tom Jones whose throat was to be cut while he was engaged in an act of sexual intercourse with Miss Atkins at knife point if necessary. Steve McQueen was also mentioned as a potential victim.

Copies of the Virginia Graham statement were prepared by the prosecution and at the court's instruction were delivered one to each attorney then appearing for the defense and one to the trial court. No other copies of the statement were released. The statement was edited to exclude inadmissible matter in preparation for Mrs. Graham's testimony. In October 1970, petitioner Farr was a reporter for the Los Angeles Herald Examiner, a daily newspaper. He learned of the Graham statement. Although aware of the content of the December 10, 1969, Order re Publicity he contacted three persons subject to the court order seeking a copy of the statement. Farr told his potential sources of the statement that he would keep confidential the identity of the source. He received two copies of the statement on October 7, each from an attorney of record in the murder trial and one copy on the morning of October 8 from a person subject to the Order re Publicity who may or may not have been an attorney of record.

On October 8, 1970, Robert Steinberg, an attorney representing Mrs. Graham, told the trial court that it had come to his attention "that one of the defense lawyers" had released the Graham statement to Farr. At an in-chambers hearing, Judge Older, presiding over the Manson trial, asked Farr if the Herald Examiner intended to print a story based upon the statement. He also sought the identity of the persons who had given a copy to Farr. While informing the court that he

had copies of the Graham statement, Farr refused to disclose the sources of it, asserting the immunity from contempt granted to newspapermen by Evidence Code section 1070. On October 9, Farr's story bearing his by-line and headlined "Liz, Sinatra on Slay List—Tate Witness" appeared in the Herald Examiner. The story repeated the sensational, gory details of planned murders contained in the Graham statement as well as material in the statements implicating Manson in the murders already committed. Mrs. Graham testified in the Manson trial on October 10. Much of the matter contained in the statement given by her to Kay and printed in the Herald Examiner story was not permitted in evidence.

Manson, Miss Atkins, and their codefendants were found guilty of the counts of murder charged against them and were sentenced to death. An automatic appeal to the Supreme Court is now pending. After judgment in the Manson case the trial court, on May 19, 1971, convened a hearing to determine the source of the Herald Examiner story recounting the Graham statement. At the outset, the trial court announced that the purpose of its hearing was to determine whether there had been a violation of its Order re Publicity which had jeopardized a fair trial for the defendants in the Manson case.

By May 19, Farr had terminated his position with the Herald Examiner and accepted employment as press secretary to the Lis Angeles District Attorney, the prosecutor in the Manson trial. Farr was called as the first witness at the hearing. He stated that with knowledge of the order prohibiting the disclosure he had obtained copies of the Graham statement from two of the attorneys of record in the Manson trial and identified

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the members of the group to which those two belonged as Mr. Bugliosi, Mr. Musich, and Mr. Kay, all deputy district attorneys, and Mr. Kanarek, Mr. Shinn, and Mr. Fitzgerald, counsel for various of the defendants.[1] Having received that information, the trial court recessed the hearing to permit interrogation of the attorneys designated by Farr.

Messrs. Bugliosi, Musich, Kay, Kanarek, Shinn, and Fitzgerald were subpoenaed. Each testified under oath in effect denying that he had directly or indirectly furnished the Graham statement to Farr. Members of the prosecutorial team strongly intimated that the statements must have come from one or more of defense counsel. The attorneys for the defense intimated with equal strength that the source was the prosecution. The trial court again recessed the hearing to permit further questioning of Farr.

The hearing resumed, and a series of questions was asked of Farr. He acknowledged that he had obtained three copies of the Graham statement, two from attorneys of record, members of the previously identified group of six, and one from a person subject to the court order but whom Farr refused to disclose as either included or excluded from the group of six. He refused to answer a series of questions asking the identity of the persons who had furnished the Graham statement to him including specific interrogation naming each lawyer in the group of six previously disclosed. Farr similarly refused to answer questions seeking to ascertain the places where he had obtained the copies of the statements, the attorneys of record approached by

[1]Ronald Hughes, counsel for one of the defendants in the Manson trial died during the trial. Farr acknowledged that Mr. Hughes was not a source of the Graham statement.

him to obtain the statement and to whom he had given a promise of confidentiality of source, a question asking whether a source of the statement was an associate of an attorney of record, and a question asking whether a copy of the statement had been obtained from the office of the district attorney. Farr justified his refusal to answer by reference to Evidence Code section 1070. In each instance of a refusal to answer the court ordered an answer on penalty of contempt. After a further refusal the court held Farr to be in direct contempt. It ordered him incarcerated in the county jail until he answered the questions but stayed its order to permit Farr to pursue this writ of review.

In this proceeding, petitioner Farr contends: (1) the judgments of guilt entered in the Manson trial and the automatic appeal of those judgments to the Supreme Court deprived the trial court of jurisdiction over the trial so as to render it powerless after judgment to conduct a hearing into the circumstances of the purported breach of the Order re Publicity; (2) petitioner Farr is granted immunity from punishment for contempt by Evidence Code section 1070 because he was a "newspaperman" when he solicited and received the Graham statements although he was no longer a "newspaperman" at the time of the hearing; and (3) the sources of the Graham statements are protected from disclosure by a First Amendment privilege. Amici curiae who have filed briefs in support of petitioner's position contend, in addition, that the Order re Publicity is void because it constitutes an unconstitutional restriction upon freedom of the press. We conclude that the judgment of contempt is valid.

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Jurisdiction of Trial Court

Petitioner contends that the trial court was without jurisdiction to proceed with its inquiry into possible violations of its Order re Publicity. He argues that the trial of the Manson matter had ended before the inquiry commenced and concludes that by reason of the end of the principal action the court, if it desired to institute punishment for contempt of an order made in the course of the trial, was limited to referring the matter to the city attorney for appropriate action.

A contention identical with that made by petitioner here has been made to the Court of Appeal in an earlier case and rejected by it. There a dissatisfied litigant had accused the court reporter of tampering with the record and one of the counsel in the case with unethical solicitation of litigation. The trial out of which the complaint arose had been terminated by a voluntary dismissal. The trial court nevertheless conducted a hearing to determine the validity of the charges. Two witnesses called at the hearing refused to testify and were held in contempt. On review of the contempt adjudication the witnesses contended that jurisdiction of the trial court over the principal action having terminated, it no longer could proceed with the hearing on the allegations of misconduct by the reporter and counsel. They argued that the sole remedy lay in a criminal contempt prosecution instituted by the district attorney. The Court of Appeal rejected the contention holding that the trial court had power to proceed and that the witnesses were in contempt of the court for refusing to answer questions put to them in the course of the hearing. It said: "It may be conceded that if an unverified complaint were presented against a person who had no connection with the court or with any adjourned or pending proceeding before it the judge might be war-

ranted in declining to file and consider it. Ordinarily, complaints charging crime are filed in the justice or municipal court. . . . However, the same does not hold true as to a court reporter, who is an adjunct of the court. . . . Neither does it apply to counsel who have conducted a trial or other hearing before the superior court. And the court's power does not end with the right to control 'its ministerial officers and all other persons in any manner connected with a judicial proceeding,' but also in furtherance of justice it may 'compel the attendance of persons to testify in an action or proceeding pending therein.'" (*Whitlow v. Superior Court*, 87 Cal.App.2d 175, 182 [196 P.2d 590]; hear. den.) Our Supreme Court has recently cited *Whitlow* with approval in a decision upholding the proposition that a trial court retains the power to punish for contempt occurring in an action although the principal action itself has terminated. (*Morelli v. Superior Court*, 1 Cal.3d 328, 332 [82 Cal.Rptr. 375, 461 P.2d 655].)

In the case at bench the trial court was faced with information that two of the six trial counsel who had conducted a case before it was guilty of serious misconduct. It was both empowered and duty bound to inquire into the validity of the information. Significantly, in the early stages of its inquiry it became apparent that the prosecution in the principal case was asserting the position that the Graham statements had been given to Farr by defense counsel while the attorneys for the defense implied equally that the statements had emanated from the prosecution. Judge Older could not, if he recognized his duty as a judicial officer, blind himself to the likely possibility that the question of prejudicial publicity would be an issue on appeal of the principal case. Rather, he was required to do as he

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did—risk the disapproval of the powerful press and mass electronic communication media to ascertain at an early date facts which could assist the resolution of that issue on appeal and determine the complicity of the officers of his court in violations of an order which would have prevented the issue from arising. If the members of the prosecution team leaked the Graham statements to Farr the issue of the prejudicial nature of those statements may merit serious consideration on appeal. (*Sheppard v. Maxwell,* 384 U.S. 333, 360-361 [16 L.Ed.2d 600, 86 S.Ct. 1507]; *People v. Brommel,* 56 Cal.2d 629 [15 Cal.Rptr. 909, 364 P.2d 845].) If the leak emanated from counsel for the defense the situation is materially different. The necessity for inquiry into Farr's sources of the statement is particularly acute in the matter at bench. There is the inescapable need to dispel or confirm the inferences flowing from the tender by the prosecution of an important position to Farr shortly after the leak and publication of the sensational and inflammatory story containing the Graham statement.

We thus conclude that the inquiry conducted by the trial court was necessary to its duty to control its own officers, counsel appearing before it. We conclude, also, that in the peculiar facts of the matter at bench the inquiry was necessary to discharge the duty of the trial court to perfect a record pertaining to an issue likely to arise on appeal and an equally important duty to protect the integrity of the very process of prosecution and defense of the principal case, the Manson trial. The necessity of the inquiry impels the ultimate conclusion that the trial court was empowered to require the attendance of witnesses and compel their testimony pertinent to the objects of the hearing.

Petitioner contends that the adjudication of contempt must be annulled because of the immunity from contempt provided in Evidence Code section 1070. That section states: "A publisher, editor, reporter, or other person connected with or employed upon a newspaper, or by a press association or wire service, cannot be adjudged in contempt by a court, the Legislature, or any administrative body, for refusing to disclose the source of any information procured for publication and published in a newspaper. Nor can a radio or television news reporter or other person connected with or employed by a radio or television station be so adjudged in contempt for refusing to disclose the course of any information procured for and used for news or news commentary purposes on radio or television."

Section 1070 read strictly does not include petitioner within the scope of its immunity. At the time of the hearing at which he refused to answer questions he was not a person described in the section. Petitioner argues that section 1070 must be construed broadly to include within its immunity a person who occupied a described status at the time he acquired the information whose source is sought although he no longer occupies the status when disclosure is required. He contends that otherwise the underlying purpose of the statute, the encouragement of free flow of information to the public, will be impaired by the reluctance of persons to communicate with reporters because of the possibility of the revelation of their identity if the reporter's status changes. Respondent counters with the argument that Evidence Code section 1070 is considerably less than an all embracing effort to aid the flow of information by protecting sources. Thus, respondent notes that the

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section, while immunizing persons connected with newspapers, radio, and television from contempt for failure to reveal a source does not protect persons connected with magazines, free lance authors, lecturers, or pamphleteers. (*In re Cepeda*, 233 F.Supp. 465, 473; cf. Comment, 6 Harv. Civil Rights—Civil Liberties L.Rev. 119, 130.)

On the narrow facts of the case at bench we do not reach the issue of construction of Evidence Code section 1070 as protecting former members of the newspaper, radio, and television profession from liability to the sanction of contempt. To construe the statute as granting immunity to petitioner, Farr, in the face of the facts here present would be to countenance an unconstitutional interference by the legislative branch with an inherent and vital power of the court to control its own proceedings and officers.

The power of contempt possessed by the courts is inherent in their constitutional status. While the Legislature can impose reasonable restrictions upon the exercise of that power or the procedures by which it may be exercised (*In re McKinney*, 70 Cal.2d 8 [73 Cal. Rptr. 580, 447 P. 2d 972]), it "cannot declare that certain acts shall not constitute a . . . contempt." (In *re San Francisco Chronicle*, 1 Cal.2d 630, 635 [36 P.2d 369].) Thus, former subdivision 13 of Code of Civil Procedure section 1209 which provided: "[N]o speech or publication reflecting upon or concerning any court or officer thereof shall be treated or punished as a contempt of court unless made in the immediate presence of such court while in session and in such a manner as to actually interfere with its proceedings" was held unconstitutional by our Supreme Court as an

invalid legislative effort to abridge the inherent power of the court. (*In re San Francisco Chronicle, supra.*)

If Evidence Code section 1070 were to be applied to the matter at bench to immunize petitioner from liability, that application would violate the principle of separation of powers established by our Supreme Court. That application would severely impair the trial court's discharge of a constitutionally compelled duty to control its own officers. The trial court was enjoined by controlling precedent of the United States Supreme Court to take reasonable action to protect the defendants in the Manson case from the effects of prejudicial publicity. (*Sheppard v. Maxwell,* 384 U.S. 333 [16 L.Ed. 2d 600, 86 S.Ct. 1507].) It performed its duty by issuing the Order re Publicity. By petitioner's own statement that order was violated by two attorneys of record, of a list of six counsel in the case. Those attorneys were officers of respondent court. By petitioner's own statement the violations occurred because of his solicitation. Respondent court was both bound and empowered to explore the violations of its order by its own officers. (*Wood v. Georgia,* 370 U.S. 375, 383 [8 L.Ed.2d 569, 82 S.Ct. 1364];[2] see also, Wright, "Fair Trial and Free Press," 57 Judicature 377, 381; and Mosk, "Free Press and Fair Trial—Placing Responsibility," 5 Santa Clara Lawyer 107, 119;[3] Cooper, "The Rationale for the ABA Recommendations," 42 Notre Dame Lawyer 857.)

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[2]"[C]ourts necessarily must possess the means of punishing for contempt when conduct tends directly to prevent the discharge of their functions" including "the authority and power . . . to assure litigants a fair trial."

[3]"[C]ourts must be prepared to deal firmly with lawyers who choose to conduct their litigation in the forum of newspaper columns or television, instead of in the courtroom."

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Without the ability to compel petitioner to reveal which of the six attorney officers of the court leaked the Graham statement to him, the court is without power to discipline the two attorneys who did so, both for their violations of the court order and for their misstatement to the court that they were not the source of the leak. Equally significant is the proposition that petitioner tarred six counsel with the same brush. Unless the court compels him to reveal which two of the six violated their professional obligation, four reputations of officers of the court will remain unjustly impaired.

We thus conclude that Evidence Code section 1070 cannot be applied to shield petitioner from contempt for failure to reveal the names of the two attorneys of record in the Manson trial who furnished him with copies of the Graham statement. A closer question exists with respect to petitioner's refusal to divulge the identity of the third person, possibly not an attorney of record but subject to the Order re Publicity who gave him a copy of the statement. Here the court's power to compel an answer in the face of Evidence Code section 1070 must rest primarily upon the necessity of disclosure as a means of enforcement of its obligation to prevent prejudicial publicity emanating from its attaches or the office of the prosecuting attorney. We conclude here, also, that section 1070 if applied to immunize petitioner from contempt would unconstitutionally interfere with the power and duty of the court. The record is clear that the only persons other than attorneys of record who had access to the Graham statement and who were subject to the Order re Publicity were attaches of the court and members of the district attorney's office. The mandate of the United States Su-

preme Court that the trial court control prejudicial publicity emanating from such sources (*Sheppard v. Maxwell, supra,* 384 U.S. 333) can be discharged only if that court can compel disclosure of the origins of such publicity.[4]

Freedom of the Press

Petitioner argues that the freedom of the press guaranteed by the First Amendment to the United States Constitution precludes inquiry into a reporter's sources of news. While existing decisional law does not support that position (see note, "Reporters and Their Sources: The Constitutional Right to a Confidential Relationship," 80 Yale Law Journal 317, 318, fn. 5, 6; comment, 6 Harv. Civil Rights—Civil Liberties L.Rev. 119, 120, fn. 9, 10), the recent grant of certiorari by the United States Supreme Court in three cases indicates a substantial possibility of change in the concept of the scope of protection afforded by the First Amendment to news sources. (*Caldwell v. United States,* 434 F.2d 1081, cert. granted, sub. nom. *United States v. Caldwell,* 402 U.S. 942; *In re Pappas* (Mass. 1971) 266 N.E.2d 297, cert. granted sub. nom. *Pappas v. Smith,* 402 U.S. 942; *Branzburg v. Pound* (Ky. Ct.App. 1971) 461 S.W.2d 345, cert. granted sub. nom. *Branzburg v. Hayes,* 402 U.S. 942.)

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[4]We express no opinion in the quantum of proof required to establish that inquiry into a newsman's source is necessary to permit the court to carry out its duty to control its own officers and to restrict persons subject to its control from disseminating the prejudicial pretrial publicity. Here petitioner has admitted the necessary facts. Neither do we express an opinion on the validity of Evidence Code section 1070 where a possible source of the newsman's story contrary to a Sheppard order is other than an attorney of record, a court attache, or the prosecutor's office.

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The context of the case at bench precludes the necessity of awaiting the outcome of the three cases now before the United States Supreme Court. All involve inquiries into reporter's sources of information relevant to prosecution of criminal activity but none involves questions seeking the source of the violation of a trial court order designed to prevent prejudicial publicity as does the matter here. Existing United States Supreme Court precedent indicates that regardless of the outcome of the three cases now before that tribunal, no rule of confidentiality of source will protect the petitioner in the case at bench.

Freedom of the press as guaranteed by the First Amendment is not absolute but is limited by narrow compelling exceptions. (See *Zemel v. Rusk*, 381 U.S. 1, 16-17 [14 L.Ed.2d 179, 85 S.Ct. 1271; *Brandenburg v. Ohio*, 395 U.S. 444, 447 [23 L.Ed.2d 430, 89 S.Ct. 1827; *Bates v. Little Rock*, 361 U.S. 516, 524 [4 L.Ed.2d 480, 80 S.Ct. 412].) That freedom exists to insure the unimpeded flow of information indispensible to the existence of a democratic society. (*Mills v. Alabama*, 384 U.S. 214, 218-219 [16 L.Ed.2d 484, 86 S.Ct. 1434; note, "Reporters and Their Sources: The Constitutional Right to a Confidential Relationship," 80 Yale Law Journal 317, 324-325.) Where, as here, the impediment to the free flow of information is indirect by the creation of a situation in which press informants may be inhibited by the possibility that their identity will be revealed, the need for disclosure of source must be weighed to determine whether it is so compelling as to outbalance the vital interest it uninhibited flow of news. (Note, "Reporters and Their Sources: The Constitutional Right to a Confidential Relationship," 80 Yale Law Journal 317, 319-320;

note and comment, "Privileged Communications—News Media," 46 Oregon L.Rev. 99, 101; comment, "Silence Orders—Preserving Political Expression by Defendants and Their Lawyers," 6 Harv. Civil Rights—Civil Liberties L.Rev. 595, 597-598; comment, "Constitutional Protection For the Newsman's Work Product," 6 Harv. Civil Rights—Civil Liberties L.Rev. 119, 135.)

In the matter at bench there is an undeniable need for disclosure of source if the court is not to be thwarted in its effort to enforce its order against prejudicial publicity issued to comply with the mandate of the United States Supreme Court in *Sheppard v. Maxwell, supra,* 384 U.S. 333. That same mandate declares that the public interest in fair trial is so compelling as to both validate and require that in appropriate situations the public temporarily be denied access to prejudicial publicity emanating from court controllable sources. Since the highest court in the United States has ruled that prejudicial material from those sources may properly be kept from news media no public purpose is frustrated by compelling a newsman to reveal his source of a violation of an order such as that considered here. If disclosure of the source of a violation may inhibit future violations, the inhibition serves the public purpose declared by the High Court and deprives the public of only that information which that court has declared must be kept from it temporarily if the constitutional right to a fair trial is to be preserved.

Balancing, as we are required to do, the interest to be served by disclosure of source against its potential inhibition upon the free flow of information, we conclude that petitioner is not privileged by the First Amendment to refuse to answer the questions put to him in the trial court.

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Validity of Order re Publicity

Amici curiae contend that the Order re Publicity issued by the trial court is a void interference with freedom of the press. They argue that the jury was sequestered in the Manson trial and no purpose could be served by an order limiting publicity after the jury was sequestered. The issue was not raised by petitioner in the trial court and is not raised by him in his petition for review. We thus do not have before us a record adequate to deal with the contention raised by amici. We cannot determine from the information available to us what effect the release of prejudicial publicity during the course of the Manson trial might have had. We thus must reject the contention.

Disposition

The order imposing judgment of contempt is affirmed.

Thompson, *J.*

We concur:

Wood, *P. J.*

Lillie, *J.*

Order Modifying Opinion and Denying Petition for Rehearing.

In the Court of Appeal of the State of California, Second Appellate District, Division One.

William T. Farr, Petitioner, v. The Superior Court of the State of California, County of Los Angeles, Respondent. Civil No. 38961.

Filed: Jan. 12, 1972.

THE COURT:

The typewritten opinion filed herein on December 17, 1971, is amended as follows:

(1) There is eliminated the sentence beginning on the last line of page 10 which states: "There is the inescapable need to dispel or confirm the inferences flowing from the tender by the prosecution of an important position to Farr shortly after the leak and publication of the sensational and inflammatory story containing the Graham statement."

(2) There is substituted for that sentence: "At the time he was required by respondent court to reveal his source, Farr had become press secretary of the prosecution."

(3) There is added at the end of the 16th line of page 11 the following footnote 2: "2 There is an implication in the briefs of amici that Judge Older should have referred the proceeding here involved to another judge rather than conducting it himself. No objection on that ground was tendered in the trial court."

(4) Footnotes 2 and 3 on page 14 of the typewritten opinion and footnote 4 on page 16 are renumbered 3, 4 and 5, respectively.

The petition for rehearing is denied.

CERTIFIED FOR PUBLICATION.

BLEED THROUGH

PROOF OF SERVICE BY MAIL

STATE OF CALIFORNIA)

ss

COUNTY OF RIVERSIDE)

I am a citizen of the United States and a resident of the county aforesaid; I am over the age of eighteen years and not a party to the within entitled action; my business address is: 1509 North Main, Suite E, Santa Ana, California 92701. On September 19, 1975, I served the within PETITION FOR WRIT OF CERTIORARI on the following in said action by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Santa Ana, California, addressed as follows:

The Honorable Charles H. Older, Superior Court of the State of California in and for the County of Los Angeles, 111 North Hill Street, Los Angeles, California 90012;

Mr. William F. Stewart, Deputy County Counsel, 648 Hall of Administration, 500 West Temple, Los Angeles, California 90012;

Clerk, Superior Court of the State of California in and for the County of Los Angeles, 111 North Hill Street, Los Angeles, California 90012;

Attorney General, 555 Capitol Mall, Suite 550, Sacramento, California 95814.

I certify (or declare), under penalty of perjury, that the foregoing is true and correct.

Executed on September 21, 1975, at Santa Ana, California.

JACK GALLAGHER

SUPREME COURT, U. S.

FILED

DEC 10 1975

MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

October Term 1975

No. 75-444

WILLIAM T. FARR,
Petitioner,

vs.

PETER J. PITCHESS,
SHERIFF OF LOS ANGELES COUNTY,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR RESPONDENT IN OPPOSITION

JOHN H. LARSON,
County Counsel
WILLIAM F. STEWART,
Principal Deputy County Counsel
648 Hall of Administration
500 West Temple Street
Los Angeles, California 90012
(213) 974-1821
Attorneys for Respondent

WESTERN PRINTING COMPANY, WHITTIER—698-1722

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IN THE

Supreme Court of the United States

October Term 1975

No. 75-444

WILLIAM T. FARR,
Petitioner,

vs.

PETER J. PITCHESS,
SHERIFF OF LOS ANGELES COUNTY,
Respondent.

BRIEF FOR RESPONDENT IN OPPOSITION

INTRODUCTION

This is the second time this case has been presented to this Honorable Court on petition for writ of certiorari. On November 13, 1972[1] the court denied Farr's previous petition, made on the same grounds raised in the instant petition, save one. The only new issue presented is the claim that Farr's contempt adjudication was an unconstitutional *ex post facto* application of the law. There is no issue concerning the validity of the publicity order, rather, the question goes to the courts power to enforce it.

[1] 408 U.S. 1011, 34 L.Ed.2d 305, 93 S.Ct. 430

QUESTIONS PRESENTED

1. Is the constitutional right of freedom of speech and press abridged by requiring a news reporter to appear before a judge and answer relevant questions concerning the identity of certain persons from whom he obtained court transcripts in violation of a publicity order; can the mandate of the United States Supreme Court in *Sheppard* v. *Maxwell,* 384 U.S. 333, 16 L.Ed. 2d 600 be negated by protecting under a claim of First Amendment rights a reporter's refusal to reveal observed violators of a criminal trial publicity order?

2. Under the facts of the case have constitutional *ex post facto* principles been violated by the enforcement of a coercive civil contempt sanction?

3. Is a trial judge under the decision of *Mayberry* v. *Pennsylvania,* 400 U.S. 212, disqualified from adjudicating the contempt of a witness who willfully refuses to answer relevant questions?

STATEMENT OF FACTS

The summary of facts in the Court of Appeals decision is comprehensive, however, the petitioner's statement is inadequate or misleading by omission of the following facts.

1. The full extent of petitioners activities in obtaining the Virginia Graham transcripts were not disclosed at the in chambers conferences during the *Man-*

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son trial. It was not until the initial hearing in June of 1971 that it was revealed that Farr had actually solicited the transcripts from attorneys he knew were subject to the publicity order in exchange for his promise to conceal their identity.

2. The colloquy that took place in Judge Older's chambers on October 8, 1970 occurred after Farr had made his promise to conceal and had obtained the transcripts. There was no causal connection between those in chambers conversations and the violations of the court publicity order.

3. The subsequent proceedings against Farr for contemptuous interference with a court order were dismissed on a technical ground, not on the merits. The trial court was of the opinion that the contempt proceeding was quasi-criminal in nature and that the *corpus delecti* rule applied; therefore, the offense had to be established by evidence other than the defendants own statements. At no time has Farr ever denied that he obtained the transcripts from the attorneys in exchange for a promise to conceal.

4. It is true that no contempt proceeding has ever been initiated against any party subject to the publicity order, but that fact weakens, rather than supports, petitioners case. Any action against the guilty attorneys has been frustrated by Farr's refusal to reveal their identity.

REASONS FOR DENYING THE PETITION

The Larger Problem

A substantial and disturbing problem existing unresolved since the opinion of this Supreme Court in *Sheppard* v. *Maxwell,* and posing a substantial threat to effective compliance with the Court's directive in that case, manifests itself in this case. This is the problem of enforcing valid court publicity orders issued in compliance with *Sheppard* when counsel and members of the press collaborate and the reporter refuses to reveal the identity of the party violating the court order. In such circumstances not only is the violator protected but dissemination of the prejudicial publicity is encouraged and placed beyond the authority of the trial court to curtail. Such potential for abuse cannot be countenanced.

Your Honorable Court in *Sheppard,* in unequivocal terms, mandated the trial courts of this country to take effective action at the outset of a criminal trial to insure the accused a fair hearing untainted by prejudicial newspaper publicity. In language that could not be more express or urgent it was stated that under appropriate circumstances the trial judge should make orders proscribing extrajudicial statements concerning a pending criminal case by lawyers, parties, witnesses, and court officials. Failure to take such protective measures could be construed as effectively denying the accused a fair trial, requiring a reversal of the conviction.

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The Court's concern with the prevention of prejudicial extrajudicial statements was again expressed most recently by the majority opinion in *Branzburg* v. *Hayes,* where at 33 L.Ed.2d 626, 642, the *Sheppard* case was cited as authority for the issuance of trial court orders proscribing extrajudicial statements by attorneys, witnesses, and court officials. In addition, the Court commented that where necessary to assure a defendant a fair trial, newsmen "may be prohibited from attending or publishing information about trials."

Although the opinions of the Court in *Sheppard* v. *Maxwell* and *Branzburg* v. *Hayes* indicate that in appropriate circumstance direct restraints on publication might be imposed upon the press, the constitutional validity of such action has not yet been directly determined. Thus, once the information has been acquired by the press it remains questionable whether publication of that information, no matter how potentially prejudicial to the conduct of a fair trial, could be foreclosed. The crux of the problem is the existence of this hiatus between the court's duty to restrict extra judicial statements by officers of the court and its apparent lack of direct authority over the news media once the prejudicial information is in their possession. How can the court fulfill its duty to provide a fair trial unless effective enforcement of its valid orders governing the conduct of its own officers is assured?

The facts of the instant case portray accurately the gravity of this problem, particularly when counsel and reporters collaborate. If a reporter can claim an immunity from the requirement of all citizens to testify, the courts are rendered powerless to perform the duties required of them by the United States Supreme Court. When the parties enjoined by a trial court's publicity order can shield themselves from discovery and corrective action by merely giving the extrajudicial statements to members of the news media, the ability of the trial court to protect the accused from the prejudicial effect of such statements is reduced to nothing more than the issuance of impotent admonishments. When a reporter can not only hide behind an alleged reporters "privilege" to the frustration of a court's legitimate and compelling duty but can also rely upon such a "privilege" to obtain the extrajudicial statements in the first instance, the trial court's continuing viability as the protector of a defendant's constitutional right to a fair trial is in serious jeopardy.

I

THE PETITIONER'S FIRST AMENDMENT RIGHTS HAVE NOT BEEN VIOLATED

The initial question presented that the petitioner's First Amendment rights have been abridged has been answered by the opinion of the court in *Branzburg* v. *Hayes* (1972) 408 U.S. 665, 33 L.Ed.2d 625. It is quite clear that there has been no attempt by the court

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in this case to annex the news media as an investigative arm of the government. Rather, they illustrate a conscientious effort by the court to give meaningful protection to the fair trial guarantees mandated by the Supreme Court in *Sheppard* v. *Maxwell,* 384 U.S. 333, 16 L.Ed.2d 600, by inquiring into the identity of two, perhaps three attorneys, who fragrantly violated the court's protective order.

In view of the petitioners statements that he had obtained the information from two attorneys admittedly subject to the publicity order and in a criminal case that was probably the most publicized in the history of the United States, the trial court, if it were to observe its judicial responsibilities, was compelled to conduct an inquiry into the identity of the violators. It is important to note that the proceedings at no time could be characterized as a fishing expedition. The court prior to instituting its inquiry, had been furnished with information indicating that the petitioner had knowledge of the identity of the attorneys in question. At subsequent hearings, of course, the petitioners own testimony confirmed that he had in fact received the information from at least two and perhaps three of the attorneys subject to the order.

In *Branzburg* v. *Hayes,* the Court rejected the claim that a newsman had an absolute constitutional privilege against being compelled to reveal the sources of his information.

In *Branzburg,* the reporter was held to be required to appear and testify before a grand jury investigating a crime, the court being of the opinion that the overwhelming interest of the public in the investigation of crimes by grand jurys outweighted any indirect, consequential and uncertain burden on news gathering activities. In the instant case, the reporter's testimony was sought in a court of law only after it had been clearly established (by the reporter's own statements) that he knew the identity of the attorneys violating the courts publicity order. In addition, this case is directly concerned with the protection of another constitutional amendment of great importance in a free society—the Sixth Amendment guaranteeing a criminal defendant a trial before an impartial jury, free from the effects of prejudicial publicity. The concurrent accommodation and protection of Sixth Amendment rights was not a factor present in the *Branzburg* case.

The petitioners attempted distinction of *Branzburg* is extremely superficial. The discovery of the identities of attorneys violating fair trial protection orders is immensely more important to the administration of justice than the concerns which prompted the decision in *Branzburg.* In *Branzburg,* societys compelling interest in effective law enforcement through the discovery and prosecution of criminals was held to be predominant. In the present case, the discovery of a criminal is only a part of the larger issue, for here we are confronted with a direct challenge to ef-

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fective enforcement of a criminal defendant's right to a fair trial. If a reporter can request and obtain information in violation of a fair trial protective order and then hide the attorneys identity behind a claim of First Amendment rights, any publicity order would be totally ineffectual. As the facts herein so amply demonstrate reporter and attorney do not conduct their activities in the presence of third parties.

The distinction for First Amendment analysis between a grand jury proceeding and a criminal trial was previously noted by this court when in *Wood* v. *Georgia* (1962) 370 U.S. 375, 8 L.Ed.2d 569, the majority observed:

> "First, it is important to emphasize that the case does not represent a situation where an individual is on trial; there was no 'judicial proceeding pending,' in a sense that prejudice might result to one litigant or the other by ill-considered conduct aimed at influencing the outcome of a trial or a grand jury proceeding . . . *and of course the limitations on free speech assume a different proportion when expression is directed toward a trial as compared to a grand jury investigation.*" (Emphasis added) Wood v. Georgia, 8 L.Ed.2d at page 580.

The petitioner cooperated with, and promised to conceal the identity of each of the attorneys acting in violation of the court order. The following comment of this court in *Branzburg, supra* at page 646, is therefore particularly in point.

> "Thus. we cannot seriously entertain the motion that the First Amendment protects a newsman's agreement to conceal the criminal conduct of his source, or evidence thereof, on the theory that it is better to write about crime than to do something about it. Insofar as any reporter in these cases undertook not to reveal or testify about the crime he witnessed, his claim of privilege under the First Amendment presents no substantial question. The crimes of news sources are no less reprehensible and threatening to the public interest when witnessed by a reporter than when they are not."

It is significant to note that the scope of inquiry in the proceedings before Judge Older were much more narrow and relevant than was the situation in *Branzburg*. The petitioner's own admissions established that the violators of the publicity order were all within a small defined group of individuals. Moreover, the petitioner did not object on constitutional grounds and, indeed, furnished without objection much information that clearly indicated the propriety of further inquiry by the court.

Even when the standards articulated by Mr. Justice Stewart in his dissent in *Branzburg* are applied to the facts herein, the action of the trial court did not constitute an unconstitutional infringment of First Amendment rights. The information sought was clearly relevant to a precisely defined subject of judicial inquiry, could not have been obtained by alternative means, and certainly the protection of Sixth Amend-

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ment rights and effective compliance with a constitutional mandate of the United States Supreme Court is a matter of grave national concern.

The danger to the administration of justice that recognition of a newsmans privilege would entail was observed by the majority opinion in *Branzburg*. All of those potential evils are present in the case at bar, plus the very real threat to Sixth Amendment rights. Factually and legally there exists no valid reason why the rule stated in *Branzburg* should not obtain in this case.

The premise underlying the protection of news sources is totally contradictory to the constitutional principle upon which a fair trial publicity order is based. To recognize the right to conceal the identities of attorneys violating such orders would inevitably encourage the dissemination of prejudicial information and invite violations of protective orders.[2]

If the recognition of a privilege in this case will serve to expedite the dissemination of information the order re publicity was intended to curtail, how can it

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[2]This is a consideration that has not been overlooked by the petitioner. Professor Blasi, in his exhaustive study, The Newsman's Privilege; An Emperical Study, 70 Michigan Law Review (1971) 229 at 265, made the follow-in observation from an interview with Farr.

> "A somewhat different way in which a subpoena can actually help a reporter acquire sources was suggested to me in an interview with Bill Farr, a former investigative reporter who is currently the subject of a widely publicized subpoena dispute in California. Farr speculates that the publicity he has received in accepting a contempt sentence rather than revealing his source should increase the number of unsolicited tips and leads he gets simply because people who have a story to tell will have heard of him."

seriously be denied that the mandate of the United States Supreme Court is not being frustrated. Your Honorable Court has declared that the Sixth Amendment requires that prejudicial publicity be restricted, not encouraged. No valid public purpose is promoted by broadcasting while the trial is in progress the type of information that was related in the petitioner's newspaper article.

The cribbed view taken by petitioner that before a court can inquire into a violation of its order it first must be shown that the violation resulted in prejudice to the accused is myopic and if followed would not only prevent effective enforcement of publicity orders but invites their breach. There can be no question that the type of lurid article published by the petitioner was inherently prejudicial.[3] It was expressly excluded from evidence and the dissemination of that type of information while the trial was in progress served no more valid public purpose than the release of a defendants pretrial confession or statements later ruled inadmissible.[4] To require that the court find that the violation of the order actually proved prejudicial to a defendants case before the violation can be investigated would invite wholesale breaches of court orders

[3]The article bore the headline, "Liz, Sinatra on Slay List - Tate Witness. Ghastly Tortures Planned for Stars." In this article Mr. Farr described in lurid and graphic detail the numerous tortures that the defendants in the trial purportedly planned to inflict upon the named celebrities. These acts allegedly included gouging out Elizabeth Taylor's eyes, castrating Richard Burton and skinning Frank Sinatra alive while playing his records.

[4]Recently Mr. Justice Blackmun in *Nebraska Press Assn. v. Stuart* noted in an Opinion in Chambers that the news media could be *directly restrained* from reporting a purported confession and circumstances leading to a defendants arrest.

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and leave a defendant's fair trial rights subject to the caprices of reporters striving for a sensational story and unprincipled attorneys willing to cooperate.

The petitioners facile claim that the Circuit Court of Appeals opinion implies that attorneys have a proclivity to violate publicity orders, ignores other evidentiary avenues available to the court and that the newsman itself remains subject to prosecution if they collaborate with those violating court orders need not be examined any further than the facts of this case. The petitioners theorization is completely rebutted by the actions that took place during the *Manson* proceedings. Not only did Farr obtain the information from one attorney, but from two and perhaps, a third. No one observed the attorneys handing the transcripts to Mr. Farr and when the attorneys themselves were called to testify, they all denied giving Farr the transcripts. There simply was no existing evidentiary avenues available to the court to ascertain the identity of the attornies except Mr. Farr, a fact he was well aware of when he promised to conceal their identities. Lastly, the claim that newsmen remain subject to criminal prosecution for their interference with a court order is but a theoretical possibility, as the facts of the subsequent Farr contempt proceedings bear witness. If there is no evidence other than the reporters own statements or the newspaper article, the *corpus delicti* of the offense can not be established.

II

PETITIONER'S CONTEMPT CITATION DOES NOT VIOLATE CONSTITUTIONAL EX POST FACTO PRINCIPLES

It is extremely difficult to fathom from the arguments presented by the petitioner any logical relationship between *ex post facto* principles and the circumstances of the present case. Initially it should be observed that *ex post facto* is primarily a rule of criminal law and that in California proceedings taken under the authority of California Code of Civil Procedure Section 1219 are not criminal actions but civil contempt proceedings.[5] Provisions of the California Penal Code are totally inapplicable, *Ex parte Abbott* (1893) 94 Cal. 333; *Ex parte Karlson* (1911) 160 Cal. 378; *Osborne* v. *Owsley* (MO. 1954) 264 S.W.2d 332.

Although under some circumstances the distinction between a civil and criminal penalty in contempt proceedings may be a hazy one, that is certainly not the case involving a conditional sentence to compel obedience to a court order. When a party has the ability to perform an act the law requires, a sentence conditioned solely upon the parties continued refusal, is coercive, not punitive in nature. The federal courts have long classified such coercive contempt sentences as civil, not criminal.

It is important to note that the petitioner herein had made his promises to conceal and induced the sev-

[5]Mr. Justice Douglas described Farr's coercive sentence as civil in an opinion issued when petitioner was ordered released pending disposition of appeals. 409 U.S. Petitioner's 1243, 342 Ed.2d 655.

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eral violations of the courts publicity order prior to any conference in Judge Older's chambers. The petitioner's contempt arises out of his refusal to testify, not his solicitation of a violation of the order. The court warned him several times before holding him in contempt that his refusal would constitute contempt. He was advised by counsel at all times, and enforcement of the order was stayed until exhaustion of all appeals. Subsequent to appellate rulings, Farr was twice afforded the opportunity to purge himself of his contempt.

The Petitioners mechanical argument lacks legal substance. Questions on the scope of statutory privilege constantly rise and require appellate rulings and the courts have consistently held that when the witnesses' claims have been adjudicated against him, he is required to answer the relevant questions or face coercive sanctions. This is what occurred, in the *Branzburg* case.

California Evidence Code Section 1070, relied upon by the appellant in the first instance to support his refusal to testify, is not a criminal statute. It is a statute granting certain civil immunities purely as a matter of legislative grace. The judicial construction of that statute in *Farr* v. *Superior Court,* 99 Cal.Rptr. 342 22 Cal.App.3d 60. (1971) did not broaden a crim-

inal statute but in very limited factual circumstances narrowed the scope of a legislative immunity.

All of petitioners ex post facto arguments suffer from an erroneous assumption. They relate Farr's contempt adjudication to his conduct in soliciting the violation of the court order and in publishing a story based on the obtained information. While petitioners conduct was questionable he was not held in contempt for his dealings with the attorneys, but was held in contempt solely for his refusal to testify as a witness.

The law did not authorize Farr and the attorneys to cooperate in the violation of publicity orders either in October of 1970 or at any time. What Farr did in October of 1970 is totally irrelevant. The petitioner's conduct that is in question is his refusal to testify and in this regard he received adequate notice of the risk that he was undertaking.

The essence of the ex post facto rule is that a person must be given fair warning that his contemplated conduct will result in criminal sanctions. It is beyond argument that Farr received ample warning both before the sentence was imposed and before he was incarcerated that his refusal to answer would constitute a contempt of court. No valid ex post facto claim can possibly arise from an appellate decision determining that a witness must answer relevant questions if the witness is thereafter given the opportunity to answer the questions and refuses to do so. If the witness has

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been afforded the opportunity to test the legality of his refusal on appeal, advised of the state of the law as determined by the appellate courts and then given the opportunity to comply with the law, any taint of ex post facto application has been dissipated.

III

THE PETITIONER WAS NOT DENIED A FAIR HEARING

The claim of bias was initially raised in Farr's first petition for writ of certiorari to this court. Since denial of that petition, both the California Court of Appeal on a subsequent petition for writ of habeas corpus (*In Re Farr,* 111 Cal.Rptr. 649, 36 Cal.App.3d 577) and the United States Court of Appeals for the Ninth Circuit reviewed this claim and found it devoid of merit. Similarly, the United States District Court found the allegation to be without foundation (see Petitioner's Brief, Exhibit "A," pages 40-41).

The petitioner's contentions of bias have come very late in this action. Not only did he fail to object to Judge Older presiding at the hearing, his attorney represented that prior to the hearing he had examined the Judge's background and affirmatively represented that there would be no objection to Judge Older presiding. No claim of bias was raised in his appeal to the California Court of Appeal or subsequent petition for hearing in the California Supreme Court.

A review of the record clearly indicates the lack

of bias. Indeed various actions taken by the court throughout the proceedings indicated a concerned and conscientious effort to determine the identity of the guilty attorneys without the necessity of incarcerating Mr. Farr. Ascertaining the identity of the attorneys in question was the single goal of the trial courts inquiry, not the incarceration of the petitioner. Mr. Farr was summoned as a witness to the proceedings because he had previously out of court volunteered the information that he had obtained the Virginia Graham statement from an attorney in the case.

Judge Older during the hearings gave each party full and fair opportunity to argue their respective positions. Before the petitioner was held in contempt, the court continued the proceedings and summoned all of the attorneys involved in the case and asked each under oath if they had given the transcripts to Mr. Farr. A denial by all raised the issue of perjury and necessitated further inquiries to Mr. Farr. The petitioner was afforded the opportunity to purge himself of contempt before the contempt judgment was entered and again in proceedings held after the Supreme Court denied certiorari. Moreover, the trial court on its own initiative stayed execution of its sentence until completion of Farr's appeals.

After the United States Supreme Court denied certiorari, Judge Older again held proceedings with the object of identifying the guilty attorneys without

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the necessity of incarcerating Mr. Farr. On November 22, 1972, all of the attorneys in question were again summoned to court and again, each denied under oath that they had given Farr the transcripts and affirmatively represented to him that he had no obligation to conceal their identity nor did they have any objection to his revealing the identity of his sources. Despite such representations, Farr again refused to identify the individuals who gave him the transcripts.

Petitioner's other arguments concerning bias equally lack substance. He concedes that he was cited for contempt immediately after refusing to answer the questions but tries to attach some significance to the fact that the judgment itself was not filed until nine days later. These nine days were spent in preparing the lengthy order and in collecting exhibits, and a delay for that purpose was stipulated to by his then attorney.

Petitioner's interpretation of the subsequent contempt proceedings against him for willful interference with a court order is deceptive. It is true that he was found not guilty of the contempt charged but not on the merits. The contempt citation was dismissed because the only evidence of his interference with the court publicity order was his own admissions which, in the opinion of the Judge who heard the case, could not be relied upon to establish the *corpus delicti*. (An exerpt from the transcript of Judge Jefferson's ruling is attached hereto as Exhibit "A.")

A conditional sentence of the nature imposed by the trial court has long been recognized as the least severe form of contempt sentence because it dissolves as soon as the contemner has obeyed the law. In view of the nature of the sentence imposed, petitioner's claim of prejudice is without substance. To compel an answer to its questions the courts only alternative was to imprison Mr. Farr until he consented to respond. No analysis of the judges state of mind is necessary or relevant under these cirmustances, for all that petitioner had to do to dissolve such a sentence was to comply with the valid court order.

Mayberry v. *Pennsylvania,* 400 U.S. 455, 91 S.Ct. 499 (1971) and *Johnson* v. *Mississippi,* 403 U.S. 212, 29 L.Ed.2d 423 (1971) cited by the appellant on this point are easily distinguishable on their facts as the District Court observed. The cases all pertain to behavioral offenses of a disruptive nature or acts constituting a vicious, slanderous, or personal vilification of the trial judge, occurring in his immediate presence. In each case, there was an objection to the trial court presiding made prior to the adjudication of contempt and in each case the sentence was a criminal punishment, not a coercive sanction.

The tortured analysis adopted by the petitioner in his attempt to twist the present case into the context of the *Mayberry* and *Johnson* cases overlooks one simple and elementary fact. The contempt sentence merely orders the petitioner to obey a valid court

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order. With all of Farr's assertions, there is no claim that any of his statements made under oath were untrue or that he did not in fact induce release of the transcripts from the attorneys he knew were governed by the court publicity order. The referral of the matter to another judge would in no way affect the adjudication of contempt as a willful refusal to testify constitutes a contempt in any court.

CONCLUSION

Every appropriate appellate court that has considered this case has refused to disturb the contempt judgment. The claims of prejudice and that first amendment rights have been violated, was examined at every appellate level in California, and by the United States District Court, the Circuit Court of Appeals and the United States Supreme Court.

Of all the recent cases involving claims of a newsman's privilege, the petitioners is the least worthy, for here he deliberately attempted to induce a breach of the court's protective order and succeeded. His refusal to testify was an effort to comply with his agreement with the attorneys. The trial courts attempt to ascertain the identity of attorneys who violated a protective order issued in a sensational and highly publicized criminal trial cannot be superficially characterized as a meaningless effort to satisfy the courts curiousity.

The viability of a fair trial protective order issued

in accordance with this courts mandate in *Sheppard* v. *Maxwell* is directly and deliberately challenged by the petitioner's actions in this case. As Your Honorable Court in *Sheppard* stated,

> "Neither prosecutors, counsel for defense, the accused, witnesses, court staff, nor enforcement officers coming under the jurisdiction of the court should be permitted to frustrate its function. Collaboration between ounsel and the press as to information affecting the fairness of a criminal trial is not only subject to regulation, but is highly censurable and worthy of disciplinary measures."

In light of that observation and the uncontradicted evidence of the petitioners behavior, his claims of First Amendment privilege indeed sound very hollow. To adopt the position urged by the petitioner would open the door to potential abuses so obvious that they need no recitation here. This case provides the sobering example. No substantial federal constitutional questions are present and the petition for writ of certiorari should be denied.

DATED: .....

Respectfully submitted

JOHN H. LARSON, County Counsel

By .....
WILLIAM F. STEWART
Principal Deputy
County Counsel

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So it is my holding in this case that the only proof of this alleged contempt are these statements made by Mr. Farr in the prior proceeding, and that they cannot be used against him in this proceeding to establish the *corpus delicti*. There is no other evidence to say that he solicited the transcript, so therefore I find him not guilty of any contempt in this case.

MR COOPER: Thank you, your Honor.

(Proceedings concluded.)

REPORTER'S CERTIFICATE

STATE OF CALIFORNIA)
) ss.
County of Los Angeles)

I, KATHLEEN RACKLIN, an Official Reporter of the Superior Court of the State of California, for the County of Los Angeles, do hereby certify that the foregoing pages, 1 to 14, inclusive, comprise a full true and correct transcript of the proceedings had in the matter of the within action on Monday, December 6. 1971, and that said transcript contains all of the evidence, all of the objections of counsel, and rulings of the Court, and all matters to which the same relate.

Dated this 20th day of December, 1971.

KATHLEEN RACKLIN,
Official Reporter